

No. 2478

United States
Circuit Court of Appeals

For the Ninth Circuit.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corporation,

Appellant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC BEAU-
DRY, Deceased, and ANGELE BEAUDRY,
Individually,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Northern District of California,
Second Division.

Filed

SEP 21 1914

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corporation,

Appellant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC BEAU-
DRY, Deceased, and ANGELE BEAUDRY,
Individually,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Northern District of California,
Second Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Admission of Service of Praecept for Transcript of Record	130
Assignment of Errors	118
Bond on Appeal	124
Citation on Appeal (Original)	132
Claim of Trinity Gold Dredging and Hydraulic Company	46
Clerk's Certificate to Record on Appeal	131
Decree	101

EXHIBITS:

Exhibit "A" to First Amended Bill of Complaint	46
Exhibit "A" to Claim of Trinity Gold Dredging and Hydraulic Company—Agreement July 21, 1906, Fred Beaudry and George H. Whitelaw....	67
Exhibit "B" to First Amended Bill of Complaint—Affidavit of Charles W. Willard	94
Exhibit "B" to Claim of Trinity Gold Dredging and Hydraulic Company—Agreement, August 8, 1907, Fred Beaudry and G. H. Whitelaw	74

Index.	Page
EXHIBITS—Continued:	
Exhibit "C" to Claim of Trinity Gold Dredging and Hydraulic Company— Escrow Agreement, Fred Beaudry and G. H. Whitelaw and Pioneer Trust Company of Kansas City.....	75
Exhibit "D" to Claim of Trinity Gold Dredging and Hydraulic Company— Letter, Dated January 15, 1909, Fred Beaudry and G. H. Whitelaw to Pioneer Trust Company	80
Exhibit "E" to Claim of Trinity Gold Dredging and Hydraulic Company— Agreement, Dated December 11, 1909, Fred Beaudry and G. H. Whitelaw...	84
Exhibit "F" to Claim of Trinity Gold Dredging and Hydraulic Company— Letter, Dated December 11, 1911, Fred Beaudry to G. H. Whitelaw.....	92
First Amended Bill of Complaint.....	1
Motion to Dismiss First Amended Bill of Com- plaint	97
Opinion, Oral, on Motion to Dismiss Amended Bill of Complaint	105
Order Allowing Appeal and Fixing Amount of Bond	122
Order Granting Motion to Dismiss Amended Bill of Complaint	100
Petition for Appeal	116
Praeceptum for Transcript of Record.....	127
Proposed Bill of Exceptions of Complainant	

Index.

Page

from Order Granting Defendants' Motion to Dismiss First Amended Bill of Com- plaint	103
Refusal of George H. Whitelaw to Join in Appeal	115
Stipulation Consenting to the Use of Bill of Exceptions on Order Granting Defendants' Motion to Dismiss First Amended Bill of Complaint as and for a Bill of Exceptions upon Appeal from Judgment.....	110
Summons in Severance.....	113

*In the United States District Court, in and for the
Northern District of California.*

No. 20.

THE TRINITY GOLD DREDGING & HY-
DRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC BEAU-
DRY, Deceased, ANGELE BEAUDRY, In-
dividually, and GEORGE H. WHITELAW,
Defendants.

First Amended Bill of Complaint.

To the Judges of the United States District Court,
in and for the Northern District of California:

After leave of Court first had and obtained in that
behalf, The Trinity Gold Dredging & Hydraulic
Company, a corporation organized and existing under
and by virtue of the laws of the State of Arizona,
and a citizen and resident of said State, brings this
its first amended bill of complaint against Angele
Beaudry, as executrix of the last will and testament
of Frederic Beaudry, deceased, of the City and
County of San Francisco, in said State of California,
and a citizen, resident and inhabitant of said State
and of the Northern District thereof, Angele Beau-
dry, individually, of the City and County of San
Francisco, in said State of California, [1*] and a
citizen, resident and inhabitant of said State and of
the Northern District thereof, and George H. White-

*Page-number appearing at foot of page of original certified Record.

law, of Los Angeles, in the County of Los Angeles, in said State of California, and a citizen, resident and inhabitant of said State, and complaining of the said defendants your orator complains and says:

I.

That the complainant, The Trinity Gold Dredging & Hydraulic Company, was organized as a corporation under the laws of the then Territory (now State) of Arizona on the 25th day of November, 1908, and ever since its said organization as such has been and now is a corporation duly organized under the laws of the said State (formerly Territory) of Arizona, with its principal office at Tucson, in said State, and having an office for the transaction of its corporate business at Minneapolis, in the State of Minnesota, and ever since the admission of the State of Arizona as a State has been and now is a citizen and resident of the said State of Arizona.

That Frederic Beaudry (who was the same person as the Fred Beaudry hereinafter mentioned, and who is herein designated as Fred Beaudry) was during all the times herein mentioned, up to the time of his death on or about the 16th day of December, 1911, a citizen, resident and inhabitant of the City and County of San Francisco, State of California, and of the Northern District of the said State of California; that the said Fred Beaudry died on or about the 16th day of December, 1911; that the said Fred Beaudry left a last will and testament wherein he named, designated and appointed the defendant, Angele Beaudry, as executrix thereof, and wherein [2] and whereby he gave to the said defendant,

Angele Beaudry, all his property of whatsoever kind; that after the death of the said Fred Beaudry, as aforesaid, and upon proceedings in that behalf duly had in the Superior Court of the State of California, in and for the City and County of San Francisco, the Court having jurisdiction thereof, and on or about the 10th day of January, 1912, the order of the said Court was duly given and made admitting the said last will and testament of the said Fred Beaudry, deceased, to probate, and ordering the issuance of letters testamentary thereon to the said defendant, Angele Beaudry; that thereupon and on or about the said 10th day of January, 1912, the said Angele Beaudry duly qualified as such executrix and letters testamentary were duly issued to her out of and under the seal of said Court as such executrix; that said letters never have been revoked or set aside and are now in full force and effect, and ever since the said 10th day of January, 1912, the said defendant, Angele Beaudry, has been and now is the duly appointed, qualified and acting executrix of the last will and testament of the said Fred Beaudry, deceased; that the said Angele Beaudry, as such executrix, and the said Angele Beaudry, individually, at all times herein mentioned has been and now is a citizen, resident and inhabitant of the State of California, and of the Northern District thereof, and of the City and County of San Francisco, in said State.

That the defendant, George H. Whitelaw, ever since about the 1st day of January, 1908, has been and now is a citizen, resident and inhabitant of the State of California, and of the City of Los Angeles,

County of Los Angeles, in said State. [3]

II.

That heretofore and on the 21st day of July, 1906, the said Fred Beaudry claiming to be the owner of certain lands and properties situated in Trinity County, in said State of California, including the lands and properties hereinafter mentioned, and desiring to find a purchaser for the same and for the purpose of procuring the sale thereof to such purchaser, did procure the said defendant, Whitelaw, who was then residing at Delta, in the State of Colorado, to act as agent for the said Fred Beaudry for the purpose of negotiating a sale of the said properties, and for the purpose and as a means of procuring such purchaser through such agency, and with the intention and purpose that the contract of sale hereinafter referred to from said Fred Beaudry to said Whitelaw should be assigned to such purchaser so obtained by said Whitelaw for said Fred Beaudry, the said Fred Beaudry did on the 21st day of July, 1906, enter into a contract of sale by the terms of which said Fred Beaudry, as first party therein, did agree to sell to the said defendant, Whitelaw, and to his assigns who should succeed to the interests of said Whitelaw, as second party and vendee in said contract, certain lands and properties situated in Trinity County, in said State of California, hereinafter described, and did agree to convey the same to said Whitelaw, or his assigns, as aforesaid, upon the payment of the purchase price in the said contract fixed, by good and sufficient deed, free from all encumbrances.

That the said lands and properties, the subject of the said contract, were and are located in Township 35 North, Range 8 West, Mount Diablo Base and Meridian, in Trinity [4] County, California, and are described as follows, to wit:

Certain gravel mines, together with the timber, the improvements thereon and fixtures and personal property belonging to and used in connection therewith, including pipes, flumes, ditches, sawmills, block-mill, giants, tools, buildings, furniture and the first right to six thousand (6,000) inches of water from the East Fork of Stewart's Fork of the Trinity River, and water rights from Strobe Creek, including those certain mining claims and properties known as:

Minersville No. 1, 160 acres more or less, patented.

Minersville No. 2, 160 acres more or less, patented.

Minersville No. 3, 160 acres more or less, patented.

Red Gulch, 140 acres more or less, patented.

Ridge, 160 acres more or less, patented.

Gassy Hill, 160 acres more or less, patented.

Head of Digger Creek, 160 acres more or less, patented.

Diener, 160 acres more or less, patented.

Diener No. 2, 160 acres more or less, unpatented.

Mule Creek Ridge, 160 acres more or less, unpatented.

Long Gulch, 120 acres more or less, unpatented.

Connection, 40 acres more or less, unpatented.

Sweet Gulch, 160 acres more or less, unpatented.

Little Mule No. 2, 160 acres more or less, unpatented.

Strope Creek, 160 acres more or less, unpatented.

Little Mule, 160 acres more or less, unpatented.

Greenhorn Flat, 160 acres more or less, Receiver's Receipt.

Greenhorn Flat No. 2, 160 acres more or less, Receiver's Receipt.

Greenhorn Gulch, 140 acres more or less, Receiver's Receipt.

Taylor Gulch, 160 acres more or less, Receiver's Receipt.

Lane Gulch, 160 acres more or less, Receiver's Receipt.

That as to the said mining claims opposite which, as hereinbefore set forth, the word "patented" occurs, the said Fred Beaudry represented that the said mining claims had been patented and that he was the sole owner in fee thereof; that as to the said mining claims opposite which, as hereinbefore set forth, the word "unpatented" occurs, the said Fred Beaudry represented that he was the sole owner thereof as valid mining claims held by valid mining locations under the laws of the United States validly made; that as to the said mining claims opposite which, as hereinbefore set forth, the words [5] "Receiver's Receipt" occurs, the said Fred Beaudry represented that he was the sole owner of the said claims as valid mining claims held by valid mining locations under the laws of the United States validly made, and that Receiver's Receipts had been duly issued to him by the United States Government as

such owner under valid applications for patent therefor from the United States Government, in pursuance of which said applications full consideration therefor had been paid to the United States Government; and in and by the said contract the said Fred Beaudry represented the validity of the patents thereon as to all those mining claims upon which patents had been issued, as hereinbefore set forth, and the validity of the locations and mining claims thereon as to those claims which were unpatented, and the validity of the mining claims and locations and Receiver's Receipts thereon as to those tracts upon which Receiver's Receipts had been issued, as hereinbefore set forth, and in and by the said contract the said Fred Beaudry agreed that, upon the payment of the consideration provided for by the said contract, he would convey good and valid title, as aforesaid, to all of the said properties and mining claims, with the timber thereon, free of all liens and encumbrances.

That the purchase price of the said property fixed in the said contract was the sum of \$250,000, the same to be payable in instalments, with interest, at various times stated in said contract; that the date fixed in the said contract for the payment of the first instalment of the said purchase price was the 10th day of August, 1907, and the time was so fixed more than one year after the date of the said contract in order that the said Whitelaw, as such agent and [6] representative of said Fred Beaudry, would have the intervening period of time to procure a purchaser for the said property as assignee of the said White-

law under said contract.

That in and by the said contract it was further provided that the second party thereto should make necessary improvements and repairs on the said property so as to put certain of the mining claims thereon in complete readiness for exploitation; also that on certain other property the purchaser should place a working hydraulic plant, build a new flume, enlarge the ditch for the purpose of carrying water to the said properties, build a wagon road to certain of the said properties, and put up a telephone along the line of the water ditch supplying the said properties with water and connect it with the main through telephone line, and that the purchaser should spend not less than \$10,000 in making such improvements.

That in and by the said contract it was further provided that the purchaser should have the right to use all of said properties, except a certain portion thereof reserved until the sum of \$62,500 had been paid on account of the purchase price, for the purpose of prospecting, developing and working the said mines, the said purchaser to have complete possession of all of said property as soon as \$62,500 had been paid on account of the purchase price.

III.

That the said Whitelaw, upon the execution of the said contract, went into possession of the said property, but all his acts in the premises were as agent of the said Fred Beaudry, as hereinbefore set forth, and the said Whitelaw did not [7] himself pay any portion of the purchase price of the said property, either at that time or at any other time, or make

any expenditures on the improvements on the said properties, as provided for by the said contract, but at all times both then and thereafter in connection with the said property acted and has acted and now acts as agent and representative of the said Fred Beaudry, and of the estate of said Fred Beaudry, deceased, and of the defendant, Angele Beaudry, as executrix, as aforesaid, and as sole devisee and legatee of said Fred Beaudry, in the making of the said contract and in the procuring of a purchaser through said contract of said lands and premises.

IV.

That in pursuance of the said agency and on or about the 20th day of August, 1907, and before any part of the purchase price under said contract had been paid, said Whitelaw, with the assistance of one William D. Beam, procured by said Whitelaw to assist him in the premises, said Beam acting for said Whitelaw and said Fred Beaudry, did procure one V. A. Whipple, of Minneapolis, in the State of Minnesota, to enter into an agreement between said Whipple, said Whitelaw and said Beam, and the said Whitelaw, Beam and Whipple did then and thereupon enter into an agreement under and by the terms of which said Whitelaw transferred, assigned and set over to himself, said Beam and said Whipple all the rights and interests of said Whitelaw in the contract hereinbefore referred to with the said Beaudry, dated July 21, 1906, and all the right, title and interest of said Whitelaw under said contract in the said properties, the subject thereof. That in and by the said agreement between said Whitelaw, Beam

and Whipple it was provided [8] that the said Whitelaw, Beam and Whipple should cause to be organized a mining company or companies which should become the purchaser or purchasers, and assignee or assignees, of all of the rights originally vested in the said Whitelaw under the said contract of July 21, 1906, and in and to the properties the subject of the said contract, and that the said mining company or companies should become the purchasers under said contract of July 21, 1906, of the lands and properties therein named as assignees of said Whitelaw, and that the said mining company or companies should pay or cause to be paid the purchase price stipulated in said contract of July 21, 1906, and should perform all of the terms, conditions and covenants of the said contract of July 21, 1906, on the part of the said Whitelaw to be performed.

That thereafter, and in accordance with the said agreement between the said Whitelaw, Beam and Whipple, the said Whitelaw, Beam and Whipple did cause to be organized three certain mining companies known, respectively, as The Trinity Gold & Timber Company, Trinity Gold Milling Company, and the complainant herein, The Trinity Gold Dredging & Hydraulic Company. That all of the said companies were organized as corporations under the laws of the territory (now State) of Arizona, the said The Trinity Gold & Timber Company having been so organized on or about the 23d day of May, 1908; the said Trinity Gold Milling Company having been so organized on or about the 20th day of May, 1908; and this complainant, The Trinity Gold Dredg-

ing & Hydraulic Company, having been so organized on or about the 25th day of November, 1908. [9]

That the said corporations were so organized by the said Whitelaw, Beam and Whipple solely for the purpose of becoming purchasers of said lands and properties the subject of the said agreement of July 21, 1906, through an assignment of all of the rights of the said Whitelaw as second party thereto and purchaser thereunder, and in accordance with the said purpose and plan, the said Whitelaw, Beam and Whipple did thereupon assign, transfer and set over to the said three last-named corporations the said contract of July 21, 1906, and all their rights of any kind thereunder, and all their rights of any kind in and to the lands and properties the subject of the said contract; that thereafter, and on or about the 1st day of December, 1909, the said The Trinity Gold & Timber Company and the said Trinity Gold Milling Company did transfer, assign and set over unto this complainant, The Trinity Gold Dredging & Hydraulic Company, the contract of July 21, 1906, and all the rights of the said corporations, or either of them, under the said contract and in and to the properties the subject thereof, and the said complainant, The Trinity Gold Dredging & Hydraulic Company, did on or about the 1st day of December, 1909, become through assignments from said Whitelaw, Beam and Whipple, said The Trinity Gold & Timber Company and said Trinity Gold Milling Company the sole assignee and owner of the said contract of July 21, 1906, and of all of the rights of the said Whitelaw, as second party and purchaser under said

contract, and in and to the lands and properties the subject of the said contract, and of all of the rights of the said prior assignees and holders under the said contract, and in and to the said lands [10] and properties, to wit, of the said Whitelaw, Beam and Whipple, the said The Trinity Gold & Timber Company and the said Trinity Gold Milling Company, and that the said complainant ever since has been and now is such owner and assignee of said rights as purchaser and second party under said contract of July 21, 1906.

V.

That subsequent to the execution of said original contract of July 21, 1906, and prior to the 1st day of March, 1912, the terms of said contract with respect to the times of payment of the various instalments of said purchase price were modified and changed by express contract between said Fred Beaudry and the person or persons vested at the time of such change with the rights of the said Whitelaw as second party thereto and purchaser thereunder; that the terms of the said contract were between the said dates similarly changed by imposing other obligations on the purchaser thereunder for the payment of other expenses in connection with the said contract and the said properties than as provided in the said original contract.

VI.

That up to the time of the rescission of said contract by this complainant, as hereinafter stated, this complainant and its predecessors in interest in the said contract, [11] as hereinbefore set forth, have

at all times duly and punctually performed all the obligations, terms, conditions and covenants of the said contract, as so modified, on their part to be performed and have made all the payments provided by the said contract, as so modified, to be made up to the time of such rescission.

That the complainant herein and its predecessors in interest under the said contract, as hereinbefore set forth, have paid to the said Fred Beaudry and his estate, as principal of the purchase price provided by the said contract, the sum of \$200,000, and as interest on deferred payments and as consideration for deferring the said payments on account of the said purchase price by the modifications of the said original contract, as hereinbefore set forth, the further sum of \$20,950, of which said sums the amount of \$31,969.95, principal and interest, was paid by this complainant during the months of January and February, 1912, and after the death of said Fred Beaudry, as aforesaid; that this complainant and its predecessors in interest have further paid and expended upon the improvements provided to be constructed on the said property under the said contract, as hereinbefore set forth, and for other expenses in connection therewith, as provided by the said contract and the various modifications thereof, hereinbefore referred to, a sum not less than \$83,219; that all said payments aggregating the sum of not less than \$304,169 were so made prior to the first day of March, 1912; that complainant and its predecessors in interest have further expended in the care and management of said properties, and in the operation of

said mining claims, while in possession of said properties, [12] and prior to the 1st day of December, 1911, further large sums which at all times have been and are largely in excess of any and all receipts from said operation. That the gross receipts from the operation of said properties during the entire time when complainant and its predecessors in interest were in possession thereof, as aforesaid, did not exceed the sum of \$35,000.00; that complainant did not prospect or mine upon or operate in any manner said properties after the 13th day of September, 1912, nor was any gold or anything else of value taken from said properties by complainant subsequent to said 13th day of September, 1912.

VII.

That complainant and its predecessors in interest as purchasers under said contract of July 21, 1906, were ever since the payment of \$62,500 on account of the purchase price of the said properties, and up to and beyond the time of the commencement of this action, in the possession and occupation of the property and premises, the subject of the said contract.

VIII.

That prior to the 21st day of July, 1906, the said Beaudry applied to the Register of the United States Land Office at Redding, in the State of California, for a mineral patent for the mining claim hereinabove referred [13] to and designated as the Long Gulch placer claim; that on said 21st day of July, 1906, final action had not been taken by said Register or said land office upon said application of said Beaudry, but said application was pending in

said land office; that neither upon said date, nor at any time thereafter prior to the 10th day of September, 1908, were any adverse claims or contests to said application of said Beaudry to said Long Gulch placer claim pending in said land office, or elsewhere; that on or about the 10th day of September, 1908, certain proceedings adverse to said application of said Beaudry were instituted by the United States Government, at the instance of the Forest Reserve Commissioner of said Government; that in and by said last mentioned proceedings, it was asserted [14] and charged by said Government that the land included in said Long Gulch placer claim was of no value for mineral purposes, because the same had become exhausted of all mineral deposits, and that the title to said land was sought by said Beaudry not for mineral deposits but because of valuable timber thereon contained; that during the month of September, 1908, the predecessors in interest of this complainant for the first time became aware of the existence of said adverse proceedings by the United States Government, but that the said Beaudry thereupon and repeatedly thereafter assured the predecessors in interest of complainant and complainant that the claims of the United States Government in that regard were wholly without foundation, that said proceedings were wholly baseless, and that the certain result of said Beaudry's application for a patent to said Long Gulch placer claim would be that such patent would issue to said Beaudry notwithstanding said adverse proceedings on the part of said United

States Government; that thereafter and on or about the 12th day of May, 1909, the application of said Beaudry for a patent to said Long Gulch placer claim and the adverse proceedings instituted by the United States Government came on for hearing before the Register and Receiver of the United States Land Office at Redding; that upon said hearing, questions of fact and law arose and were contested by said Beaudry and by said United States Government, respectively; that said proceedings were duly submitted to said land office, and thereafter and on or about the 25th day of May, 1910, the said Register and said Receiver of said land office at Redding gave and made their decision in the premises; that in and by said last mentioned decision, it was [15] decided that the contentions of the United States Government with respect to said Long Gulch placer claim, which are hereinabove set forth, were not well founded, but it was further adjudged by said Register and said Receiver that said Beaudry had failed to establish the mineral character of the land included in said Long Gulch placer claim, and said Register and said Receiver recommended that said Beaudry be allowed a reasonable time to make a further showing as to the mineral character of said land, and that, upon his failure to make such showing, said mineral claim should be held for cancellation; that thereafter the decision of said land office at Redding was reviewed by the General Land Office of the United States Government at Washington, District of Columbia, and thereafter, and, to wit, on or about the 17th day of April, 1911, the Commissioner of the

General Land Office at Washington duly gave and made his decision reviewing the action of said Register and said Receiver hereinabove referred to and modifying the same, and directing that the said entry of said Beaudry be held for cancellation upon the ground that said Beaudry had failed to establish the mineral character of the land included in said Long Gulch placer claim; that at the times hereinbefore mentioned, the said Beaudry repeatedly represented to this complainant and its predecessors in interest that notwithstanding the action of said Register and Receiver, and notwithstanding the action of said Commissioner, patent would eventually issue to him from the United States Government to said Long Gulch placer claim, and that the said Beaudry intended to and would appeal from the decision of said Commissioner to the Secretary of the Interior and obtain a reversal of the decision of said Commissioner; that [16] thereafter the said Beaudry did appeal from the decision of said Commissioner to the Department of the Interior, and thereafter and on or about the 23d day of May, 1912, the order of said Commissioner was affirmed by the Assistant Secretary of the Department of the Interior of the United States; that thereafter the defendant, Angele Beaudry, as executrix of said Beaudry's will, petitioned the said Department for a rehearing of its decision affirming the action of said Commissioner, and said petition for rehearing was pending up to and including the 13th day of September, 1912; that on said last mentioned date, said petition for rehearing was denied by said Department of the Interior; that at

all of the times prior to the denial of said petition for rehearing by the Department of the Interior, this complainant was assured by said Beaudry, and after the death of said Beaudry by the said Angele Beaudry, as his executrix, that grounds existed for the reversal of the action of the Commissioner of the United States Land Office holding said Fred Beaudry's entry to said Long Gulch placer claim for cancellation, and that a patent to said mining claim would eventually issue to said Beaudry or to his executrix; that prior to the institution of the proceedings brought by the United States Government to cancel the entry of said Beaudry to said Long Gulch placer claim, this complainant and its predecessors in interest had paid a large portion of the consideration by it to be paid under the terms of said contract of July 21, 1906, and the modifications thereof; that by reason of said payments and by reason of having undertaken the performance of said contract, and having become heavily involved in the performance thereof, the predecessors in interest of this complainant could not on said 12th day of September, 1908, or at [17] any time thereafter, nor could this complainant at any time subsequent thereto, seek a rescission of said contract without involving themselves or itself in litigation and probable loss; that said last mentioned facts were well known to said Fred Beaudry, and to the defendant, Angele Beaudry, as the executrix of his will, and said Fred Beaudry, and the said Angele Beaudry, executrix as aforesaid, well knowing the reluctance of this complainant and its predecessors in interest

to call for a rescission of said contract owing to such facts, represented to the predecessors in interest of said complainant and to this complainant repeatedly after the 12th day of September, 1908, and during the pendency of said contest of the United States Government over the validity of said mining entry, that patent would in the end certainly issue to the said Beaudry or to his executrix; that said representations were made for the purpose of inducing the predecessors in interest of this complainant and this complainant to continue in the performance of said contract, and for the purpose of persuading the predecessors in interest of this complainant and this complainant from calling for a rescission of said contract, and for the purpose of persuading and inducing this complainant and its predecessors in interest to make further payments to said Fred Beaudry pursuant to the terms of said contract; that pursuant to the terms of said contract, as construed by the laws of the State of California, the said Fred Beaudry was not required to have or obtain a valid title to said Long Gulch placer mining claim, or to any of the claims in said contract described, at any time prior to the time when, by the terms of said contract, the said Fred Beaudry was to execute and deliver to this complainant a conveyance of said [18] Long Gulch placer mining claim and said other mining claims in said contract referred to; that the time last hereinabove referred to, to wit, the time when, under the terms of said contract, said Beaudry would be required to convey said mining claims, and particularly said Long Gulch placer min-

ing claim, to this complainant, was the date upon which the final payment by this complainant to said Beaudry was to be made pursuant to the said contract and the extensions thereof hereinabove referred to, and was, to wit, the 1st day of January, 1913; that under and by virtue of the terms of said contract and the extensions thereof hereinabove referred to, this complainant was not legally in a position, nor were its predecessors in interest ever in a position, to rescind said contract, and could not have rescinded said contract, because of the proceedings taken by said United States Government to cancel the entry of said Fred Beaudry to said Long Gulch placer mining claim at any time prior to the 1st day of January, 1913, unless, prior to that time, it became reasonably certain not only that said Beaudry's title to said Long Gulch placer mining claim had failed, but also that said Beaudry could not by any ordinary means obtain title to said Long Gulch placer mining claim by or before or on said 1st day of January, 1913; that so long as it remained within the realm of reasonable possibility for said Beaudry or the executrix of his will to complete his title to said Long Gulch placer mining claim either by obtaining a reversal of the decision of said Local Land Office at Redding, or by obtaining a reversal of the decision of the said General Land Office at Washington affirming the decision of said local land office, or by obtaining a rehearing of the decision of the Department of the Interior affirming [19] the decision of said General Land Office, this complainant and its said predecessors in interest were

unable to know with reasonable certainty that said Beaudry, or the executrix of his will, would not on said 1st day of January, 1913, be in a position to convey good and valid title to said Long Gulch placer mining claim to this complainant, and, therefore, this complainant was at all times prior to the 13th day of September, 1912, and prior to the 1st day of October, 1912, when this complainant learned for the first time of the decision of said Department of the Interior denying the petition of said Fred Beaudry for a rehearing, unable to rescind its said contract with said Beaudry upon the ground of the failure of title in said Beaudry to said Long Gulch placer mining claim; that on or about the 1st day of October, 1912, and by reason of the foregoing, this complainant for the first time became entitled to rescind said contract upon the ground of failure of title in said Beaudry to said Long Gulch placer mining claim; that if at any time prior to the said 13th day of September, 1912, or the 1st day of October, 1912, this complainant became entitled to rescind its said contract with said Beaudry by reason of the failure of title in said Beaudry to said Long Gulch placer mining claim, this complainant was induced to believe that said right did not exist by said Fred Beaudry, and by the defendant herein, Angele Beaudry as the executrix of his will, by the representations of said Fred Beaudry and said executrix hereinabove referred to; that during the pendency of said contest between said Beaudry and said United States Government over the right of said Beaudry to said Long Gulch placer mining

claim, said Beaudry, and said defendant, Angele Beaudry as his executrix, repeatedly affirmed and declared [20] to this complainant and its predecessors in interest that said Beaudry's title to said claim was perfect, and that patent would eventually issue to said Beaudry or to his said executrix, and that said lands were unquestionably as a matter of fact, as well as in law, mineral lands, and that said Beaudry had had said lands examined by mining experts, and had had tests made of said lands, which established conclusively that said lands were mineral lands; that by reason of said representations, the predecessors in interest of this complainant and complainant at all times prior to the 1st day of October, 1912, firmly believed that the lands included in said Long Gulch placer mining claim were mineral lands, and that patent would issue therefor to said Beaudry or to his said executrix, and this complainant and its said predecessors believed and were led to believe by said Beaudry and by his said executrix that in any event it would be most dangerous to complainant, in view of the large amounts of money which it had invested and paid out to said Fred Beaudry upon its contract with said Beaudry, and in view of the grave doubt as to whether the claims of said United States Government would ever be substantiated and established, to attempt to call for a rescission of said contract upon the ground of failure of title in said Fred Beaudry to said Long Gulch placer mining claim.

That prior to the 1st day of October, 1912, this complainant and its predecessors in interest had paid

in excess of \$300,000 upon its contract with said Beaudry in direct cash payments to said Beaudry and in moneys expended under said contract in the development of said mining claims; that on said date there remained due to be paid to the said Angele [21] Beaudry, as executrix as aforesaid, by this complainant under said contract only the final payment, to wit, the sum of \$50,000, and no more; that by reason of having paid out and expended such large amounts of money upon the performance of said contract, and in the development of said mining claims, this complainant was reluctant to call for a rescission of its said contract with said Fred Beaudry, and delayed for a period of three months after the discovery that title had completely failed in said Fred Beaudry to said Long Gulch placer mining claim, as aforesaid, and that the defendant, Angele Beaudry, as his executrix, would not be able to convey a valid title to said mining claim to complainant on the 1st day of January, 1913, to call for such rescission; that during the period between the 1st day of October, 1912, when this complainant first learned of the complete failure of title to said Long Gulch placer mining claim in said Fred Beaudry, and of the inability of said Angele Beaudry, as such executrix, to fulfill the obligations of said contract, as aforesaid, and the 31st day of December, 1912, when this complainant called for a rescission of its said contract with said Beaudry, as herein set forth, this complainant endeavored in every way by negotiations with said defendant, Angele Beaudry, and otherwise, to discover some means of enabling said

Angele Beaudry, as such executrix, to complete her title to the said Long Gulch placer mining claim, and to all of the claims referred to in said contract, and endeavored to obtain from the defendant herein, Angele Beaudry, the executrix of said Beaudry's will, a further extension of the time for payment of said sum of \$50,000, and offered to said defendant, Angele Beaudry, executrix as aforesaid, to extend the time when [22] said executrix should be called upon under said contract and the extensions thereof to convey said claims to this complainant, in order that said defendant, Angele Beaudry, executrix as aforesaid, might, in the meantime, take such action as would enable her to fulfill the terms of said contract and the modifications thereof, and to convey to this complainant, as called for by said contract and the extensions thereof, valid title to said mining claims, and all of them, and particularly to said Long Gulch placer mining claim; that notwithstanding such efforts upon the part of this complainant, said defendant, Angele Beaudry, as executrix as aforesaid, refused to extend the time of said payment, and refused to assent to an extension of the time for the completion of said contract, and prior to the 31st day of December, 1912, served a notice upon this complainant that, unless said sum of \$50,000 were punctually paid on the 1st day of January, 1913, the said defendant, as such executrix as aforesaid, would avail herself immediately of the default of this complainant in making said payment and would terminate, or attempt to terminate, the contract between the said Fred Beaudry and this

complainant, and the extensions thereof, and would demand a forfeiture, or would attempt to demand a forfeiture of all the moneys which this complainant had theretofore paid under said contract and the extensions thereof.

That on the 1st day of October, 1912, complainant first received knowledge of the denial of the petition for a hearing by said Department of the Interior at the City of Minneapolis, in the State of Minnesota; that at said time all of the officers of complainant were in and resided in [23] said City of Minneapolis; that in order to ascertain whether any reasonable means existed of overcoming the defect in the title of the estate of said Beaudry to said Long Gulch placer mining claim caused by the adverse decision of said Department, it became necessary for one of complainant's officers to go from said City of Minneapolis to the State of California; that complainant did cause one of its officers to go to the State of California for such a purpose and for the further purpose of negotiating with said defendant, Angele Beaudry, as executrix, with a view to enabling said defendant, as such executrix, to take any steps or proceeding that might enable said defendant, as such executrix, to convey to complainant a valid title to said mining claim as required by its contract with said Fred Beaudry, and if such a result could not be accomplished on or before the 1st day of January, 1913, with a view to extending the time for the final payment under said contract and for the conveyance by said defendant as such executrix to this complainant of a valid title to said Long Gulch placer mining

claim as called for by said contract; that the delay of three months by this complainant in rescinding its contract, as aforesaid, was still further occasioned by the foregoing.

That prior to the 21st day of July, 1906, the said Beaudry applied to the Register of the United States Land Office at Redding for a mineral patent to the claim hereinabove referred to and designated as the Mule Creek Ridge placer mining claim; that on said 21st day of July, 1906, final action had not been taken by said Register of said land office on said application, but said application was [24] pending in said land office; that no adverse claims or contests to said application of said Beaudry were on said date or at any time thereafter prior to the 13th day of August, 1908, pending in said land office or elsewhere; that on or about the 13th day of August, 1908, a contest similar in all respects to the contest which the United States Government prosecuted against the application of said Beaudry to said Long Gulch placer mining claim was lodged in said land office at Redding by the United States Government; that thereafter proceedings similar in all material respects, and occurring on practically the same dates, as those hereinabove described relating to said Long Gulch placer mining claim were had with respect to the application of said Fred Beaudry for patent to said Mule Creek Ridge placer mining claim; that it was not until the 13th day of September, 1912, that the Department of the Interior took final action holding the entry of said Fred Beaudry to said Mule Creek Ridge placer mining claim for cancellation,

and denying the application of the defendant herein, Angele Beaudry, as executrix, for a rehearing on its former decision, and it was not until the 1st day of October, 1912, that this complainant first learned of such final action on the part of said Department, and that title to said Mule Creek Ridge placer mining claim had completely and irreparably failed in said Fred Beaudry, and that the defendant, Angele Beaudry, as executrix, would not be able to complete or carry out the contract of said Fred Beaudry with complainant as aforesaid; that the right of this complainant to rescind upon the ground of failure of title in said Fred Beaudry to said Mule Creek Ridge placer mining [25] claim did not accrue until on or about the 1st day of October, 1912; that for similar reasons to those hereinbefore set forth in respect to the said Long Gulch placer mining claim, this complainant did not rescind its contract with said Fred Beaudry upon the ground of failure of title in said Fred Beaudry to said Mule Creek Ridge placer mining claim until the 31st day of December, 1912.

That prior to the 21st day of July, 1906, the said Fred Beaudry applied to the Register of the United States Land Office at Redding for a mineral patent to the mining claims hereinabove referred to under the heading of Receiver's Receipt, to wit, to the mining claims known as Greenhorn Flat, Greenhorn Flat No. 2, Greenhorn Gulch, Taylor Gulch and Lane Gulch, said claims being hereinafter referred to as the Greenhorn Group of placer mining claims; that on the 21st day of July, 1906, final action had not been taken by said Register or said land office on

said applications of said Fred Beaudry, but said applications were pending in said land office; that there were no adverse claims or contests to said applications of said Fred Beaudry pending in said land office or elsewhere on said last mentioned date and at no time thereafter prior to the 8th day of October, 1908; that on or about the 8th day of October, 1908, contests to said applications of said Fred Beaudry were filed in said land office by the United States Government, at the instance of the United States Forest Reserve, alleging numerous grounds and reasons why patent should not issue to said Fred Beaudry to said Greenhorn [26] Group of placer mining claims, and why the entry of said Fred Beaudry to said claims should be held for cancellation; that said grounds were in the main similar to the charges instituted by said United States Government with respect to the entries of said Fred Beaudry upon said Long Gulch placer mining claim and said Mule Creek Ridge placer mining claim; that thereafter the hearing of the applications of said Fred Beaudry and the contests of said United States Government thereto came on before said land office at Redding, and questions of fact and law arose and were contested upon said hearing; that pending said hearing and on or about the 14th day of December, 1909, said Fred Beaudry made application to said land office at Redding for permission to withdraw the applications of said Fred Beaudry on file in said office, and with leave to said Fred Beaudry to renew such applications; that thereupon proceedings were halted in said land office at Redding, and the Register and Receiver

of said land office at Redding certified the question of the right of said Beaudry to such a withdrawal to the General Land Office at Washington; that such proceeding was pending in said General Land Office until the 9th day of March, 1912, when said General Land Office gave and made its order denying such leave to the representatives of said Fred Beaudry, and directing the said land office at Redding to proceed with the trial of the issues made between said Fred Beaudry and the United States Government on the applications of said Fred Beaudry and the contest of the United States Government thereto; that thereupon the said Angele Beaudry, as the executrix of the will of said Fred Beaudry, deceased, appealed to [27] the Department of the Interior from the said last mentioned order of said General Land Office; that said last mentioned appeal was still pending and undetermined before the Department of the Interior of the United States on the 31st day of December, 1912, and the said appeal is still pending and undetermined before said Department.

That similar representations were made by said Beaudry, and the defendant, Angele Beaudry, as executrix as aforesaid, to the predecessors in interest of this complainant and to this complainant respecting their rights to said Greenhorn Group of placer mining claims as against the United States Government as were made by them with respect to his right as against the United States Government to said Long Gulch placer mining claim and to said Mule Creek Ridge placer mining claim, as hereinabove set forth; that practically the same reasons existed with

respect to said Greenhorn Group of placer mining claims which made it impossible for this complainant to rescind its said contract with said Fred Beaudry prior to the 1st day of October, 1912, as existed with respect to said Long Gulch placer mining claim and said Mule Creek Ridge placer mining claim; that this complainant did not attempt to rescind its contract with said Fred Beaudry upon the ground of failure of title in said Beaudry in and to said Greenhorn Group of placer mining claims, and upon the ground that said Beaudry could not by any possible means obtain or procure title to said mining claims and convey the same to this complainant on the 1st day of January, 1913, for similar reasons as those set forth hereinabove with respect to said Long Gulch placer mining claim and said Mule Creek Ridge placer mining claim. [28]

IX.

That under the said contract of July 21, 1906, as so modified as hereinbefore set forth, the last installment of the purchase price therein provided for was provided to be paid on the 1st day of January, 1913; that on or about the 1st day of December, 1912, said defendant, Angele Beaudry, individually, and as executrix, as aforesaid, caused to be served upon this complainant a notice that, unless said balance was paid on the 1st day of January, 1913, she would terminate said contract of sale and would retake and retain all possession, right, title and interest in and to the said properties, and would oust this complainant from the possession thereof, without accounting to this complainant or paying to it any of the con-

siderations or payments so made by complainant and its predecessors in interest under said contract.

X.

That the value of all the property the subject of the said contract of July 21, 1906, has at all times consisted, and by the parties to this action has at all times been known to consist, chiefly in their value as placer mining properties and for the timber situated thereon; that the said properties, including said Mule Creek Ridge, Long Gulch, Greenhorn Flat, Greenhorn Flat #2, Greenhorn Gulch, Taylor Gulch, and Lane Gulch mining claims, constitute a contiguous body of land and form one entire property, every part of which is a material and substantial portion of the whole, and so known by all parties to constitute such material and substantial portion; that a failure of title to any portion of the said property, and [29] particularly a failure of title to the said mining claims known as the Mule Creek Ridge and Long Gulch mining claims, materially and substantially breaks the continuity of the said tract of land and impairs in a very substantial and considerable degree the value of the said properties.

That a failure of title to the said Mule Creek Ridge and Long Gulch mining claims breaks entirely the continuity of the said tract of land and divides the same into two distinct and separate parcels, and adds very considerable difficulty in the working and operation of the said property as mining claims and in the cutting and removal of the timber therefrom.

That the value of the said properties, the subject

of the said contract, omitting therefrom the said mining claims known as Mule Creek Ridge, Long Gulch, Greenhorn Flat, Greenhorn Flat #2, Greenhorn Gulch, Taylor Gulch and Lane Gulch, has been at all times since the 21st day of July, 1906, and is now less than the value of the said property, including the said mining claims, by a sum in excess of the sum of \$60,000, and the impairment in value of the entire tract of land, the subject of the said contract of July 21, 1906, by the exclusion therefrom of the said mining claims has at all times been and is now in excess of the amounts still remaining unpaid of the purchase price of the said properties as fixed in the said contract, as so modified, and the damage suffered by this complainant by the failure of the title to the said mining claims has been and is in excess of the amount of the said purchase price so still remaining unpaid.

That the total acreage of the properties covered by [30] said contract was and is 3,160 acres; that the total acreage of the said Mule Creek Ridge and Long Gulch mining claims was and is 280 acres; that the total acreage of the said Greenhorn Flat, Greenhorn Flat #2, Greenhorn Gulch, Taylor Gulch and Lane Gulch mining claims was and is 780 acres.

XI.

That by reason of the inability of the defendant, Angele Beaudry, individually, or as executrix, as aforesaid, and by reason of the inability of the estate of said Fred Beaudry, deceased, as hereinbefore set forth, to comply with the provisions of the said agreement of July 21, 1906, on their part to be per-

formed, and by reason of the failure of the consideration for the said contract, as hereinbefore set forth, and promptly upon the discovery of such failure of consideration, and in due time and before the time for making final payment of the purchase price of the said properties as provided in the said contract of July 21, 1906, and its various modifications, as hereinbefore set forth, and on or about the 31st day of December, 1912, this complainant rescinded the said contract and caused to be served upon said defendant, Angele Beaudry, as executrix of the last will and testament of said Frederic Beaudry, deceased, and as sole devisee under the said last will and testament of said deceased, and upon the said George H. Whitelaw a notice of rescission wherein and whereby this complainant notified said defendants that it did rescind the said contract of July 21, 1906, because of such failure of consideration, and because the said Fred Beaudry had not been [31] in his lifetime, and the said executrix was not and would not be, able to convey the properties mentioned in said contract and upon the consideration for which the said payments had been made by the complainant, as aforesaid; that this complainant did then and there offer to restore to said Angele Beaudry, as such sole devisee, and as such executrix, everything of value which it had received under the said contract, upon condition that the said defendant, Angele Beaudry, as devisee and executrix, as aforesaid, did likewise; that this complainant then and there offered to restore to said Angele Beaudry as such executrix and devisee, as aforesaid, all the property which had come into the possession of this

complainant under the said contract and to restore and reconvey all rights received by this complainant thereunder on the condition that the said defendant repay to this complainant all sums paid by this complainant and its predecessors in interest under the said contract as and for the purchase price therein provided for, and for improvements on the said property made in pursuance of the provisions of the said contract; that the said amounts so to be repaid were stated and fixed in said offer at the sum of \$200,000, provided the said offer were accepted on or before the 6th day of January, 1913; that in and by said notice of rescission the complainant stated further that in case such offer were not so accepted on or before the said date, the complainant reserved the right to require as a condition for the restoration of the said property by complainant the payment to it of such further sums, in addition to the said sum of \$200,000, as the complainant might be entitled to. [32]

That the said defendant did not, as such executrix, or otherwise, on or before the said 6th day of January, 1913, accept, nor has she as such executrix, or otherwise, or at all, accepted, the said offer of this complainant, or repaid to this complainant the said sums of money, or any part or portion thereof.

That complainant hereby offers to restore to the said defendant, Angele Beaudry, as executrix, and as devisee aforesaid, everything of value which it has received under the said contract of July 21, 1906, and the various modifications thereof hereinbefore referred to, upon condition that the said defendant do likewise, that is to say, upon condition that there be

repaid to this complainant all sums which this Court may find this complainant to be entitled to as a condition of such restoration.

XII.

That no decree of distribution has ever been entered or made in the matter of the estate of the said Frederic Beaudry, deceased, by the Superior Court of the State of California, in and for the City and County of San Francisco, or by any other court, and no order has ever been made by the said court, or any other court, in the matter of the estate of the said decedent distributing any portion of the property of the said decedent; that the complainant, The Trinity Gold Dredging & Hydraulic Company, at no time since the death of the said Frederic Beaudry, nor before said time, had any officers who were or are residents of the State of California; that during all the times since the death of said Frederic Beaudry, deceased, the officers of said corporation, and all the officers thereof, have [33] been and are as follows: Vinet A. Whipple, president and treasurer; Henry Webster, vice-president; and Louis C. Konkle, secretary; that since the death of the said Beaudry and prior thereto the principal office of said corporation has been at the City of Tucson, State of Arizona, but the office for the transaction of the corporate business of said corporation has been and still is at Minneapolis, in the State of Minnesota, where all of said officers of said corporation reside; that ever since the death of said Beaudry all the officers of said corporation have been at all times and now are out of and absent from the State of California with the exception that said Konkle was present in San Francisco

in said State of California, from about the 22d day of December, 1912, to about the 10th day of January, 1913; that at said time said Konkle, in behalf of said Company, went to the State of California, and was present therein, among other things, for the purpose of investigating and getting information in regard to the status of said Beaudry estate, and that then and there, to wit, on or about the 22d day of December, 1912, said Konkle was informed for the first time that a notice had been given and published by the said executrix of the last will and testament of the said Frederic Beaudry, deceased, to the creditors of the said decedent, requiring persons having claims against him to exhibit them with the necessary vouchers to the said executrix; that at no time prior to the said 22d day of December, 1912, did the said corporation, or any officer thereof, have any knowledge or notice as provided in Chapter VI of Title XI, Part III, of the Code of Civil Procedure of the State of [34] California; that at no time prior to the said 22d day of December, 1912, did the said corporation, or any officer of said corporation, have any knowledge or notice of any notice by the executrix of the last will and testament of said Frederick Beaudry, deceased, to the creditors of said decedent requiring all persons having claims against him to exhibit them with the necessary vouchers to said executrix; that at no time prior to the said 22d day of December, 1912, did the said corporation, or any officer of the said corporation, have any knowledge or notice of the publication of any such notice, or of any notice to the creditors of the said decedent, or any knowl-

edge or notice of the fact that any such notice, or any notice, to the creditors of the said decedent had been published or given, or any knowledge or notice of the time when the presentation of its claim against the said estate would be barred; that at all times from the date of the death of the said decedent until subsequent to the said 22d day of December, 1912, the said corporation and all its officers were ignorant of the publication of any notice to the creditors of the said deceased; that at no time prior to the said 22d day of December, 1912, had any of the officers of the said corporation seen any such notice or publication or been informed of any such notice or publication; that it was not until the said 22d day of December, 1912, that the said corporation and its officers for the first time learned of such notice to creditors and of such publication of such notice; that said corporation had no knowledge or notice aforesaid by reason of the fact that it was out of the State of California, as hereinbefore set forth. [35]

That heretofore and on or about the 27th day of January, 1913, it was made to appear by the affidavit of the officers of the said complainant, The Trinity Gold Dredging & Hydraulic Company, to the satisfaction of the Honorable E. P. Mogan, a Judge of the said Superior Court of the State of California, in and for the City and County of San Francisco, that the said The Trinity Gold Dredging & Hydraulic Company, had, as hereinbefore set forth, no notice to the creditors of the estate of the said Frederic Beaudry, deceased, as provided by Chapter VI, Title XI, Part III, of the Code of Civil Procedure

of the State of California; that heretofore and on or about the 27th day of January, 1913, the affidavits of the officers of the said complainant, The Trinity Gold Dredging & Hydraulic Company, setting forth, as hereinbefore set forth, that the said The Trinity Gold Dredging & Hydraulic Company had no such notice and setting forth the facts in connection therewith hereinbefore set forth, were presented to the said Honorable E. P. Mogan, as Judge of the said Court, and then and thereupon and heretofore and on or about the said 27th day of January, 1913, the said Honorable E. P. Mogan, as Judge of the said court, duly gave and made his order permitting and authorizing the said complainant, The Trinity Gold Dredging & Hydraulic Company, to present its claim, or any claim, against the estate of the said Frederic Beaudry, deceased, to the executrix of the last will and testament of the said Frederic Beaudry, deceased, at any time before a decree of distribution should be entered in the matter of the said estate; that thereafter and in pursuance of the said order and on or about the 27th day of [36] January, 1913, and prior to the entry of any decree of distribution in the said estate and heretofore the said complainant duly presented to the said Angele Beaudry, as executrix of the last will and testament of said decedent, its claim against the said estate based upon and growing out of the facts hereinbefore in this bill of complaint set forth and for the sum of \$304,169, with interest thereon at the rate of seven (7) per cent per annum from the 31st day of December, 1912, and for the enforcement of its lien

therefor against the property hereinbefore described; that the said claim so presented was supported by the affidavit of Louis C. Konkle on behalf of the said claimant; that the said affidavit stated that the amount was justly due, that no payments had been made thereon which were not credited and that there were no offsets to the same to the knowledge of the affiant, and in the said claim as so presented the particulars of the said claim were stated; that the said Louis C. Konkle in his said affidavit set forth the reason why the said affidavit was not made by the claimant; that the said claim so presented was accompanied by copies of the instruments on which the same was founded.

That a copy of the said claim as so presented is attached to this bill of complaint and marked Exhibit "A."

That thereafter and heretofore and in pursuance of the order of the said Honorable E. P. Mogan hereinabove mentioned, and on or about the 28th day of January, 1913, and prior to the making or entry of any decree of distribution in the matter of the estate of the said Frederic Beaudry, deceased, a further claim to like effect and for [37] the same relief was likewise presented to the said Angele Beaudry, as executrix of the last will and testament of the said deceased, supported by the affidavit of Charles W. Willard on behalf of the said complainant; that the said affidavit stated that the amount of the said claim was justly due, that no payments had been made thereon which were not credited, and that there were no offsets to the same to the knowledge of the affiant, and in the said claim as so presented

the particulars of the said claim were stated; that in the said affidavit, the said Charles W. Willard set forth the reasons why the said affidavit was not made by the claimant; that the said claim so presented was accompanied by copies of the instruments upon which the same was founded.

That the said claim so presented was in the words and figures of the claim a copy whereof is attached to this bill of complaint and marked Exhibit "A," except as regards the witnessing clause and affidavit thereto, and that a copy of the witnessing clause and affidavit to the said claim is hereto attached and marked Exhibit "B."

That no action was taken upon the said claims, or either of them, by the said executrix until the 5th day of March, 1913; that on the said 5th day of March, 1913, the said Angele Beaudry, as executrix as aforesaid, rejected the said claims, and both of them, and gave written notice to the holder of said claims and to the person presenting the same that the same were rejected.

XIII.

That complainant has by reason of the facts hereinbefore set forth an equitable lien upon all the right, title [38] and interest of said Fred Beaudry, and of said estate, and of the executrix thereof, and of the defendant, Angele Beaudry, in and to the said properties named in said contract as security for the repayment to complainant of the sums expended by it, as aforesaid, and as a condition precedent to the restoration by complainant to said estate, or to said defendant as executrix, or individually, of the rights

and properties so held by complainant under said contract.

XIV.

That said defendant, Angele Beaudry, as such executrix and sole devisee, threatens and intends to, and, unless restrained by the order of this Honorable Court, the said defendant, Angele Beaudry, as such executrix and sole devisee, will ignore the said notice of rescission so served by complainant, and will declare said contract terminated and all rights of the complainant thereunder forfeited by reason of the failure of complainant to pay the instalment of the purchase price of the said property provided by the said contract, as modified, to be paid on the 1st day of January, 1913, and intends to and will assert title to the properties, the subject of said contract, without regard to the said contract, and intends to and will seek to recover to the said estate of the said Fred Beaudry, deceased, and to said defendant, Angele Beaudry, as executrix, and individually, the said properties, without reimbursing complainant for the amounts paid by it, as aforesaid, and intends to and will institute and prosecute suits and proceedings to that end.

XV.

That the defendant, Whitelaw, claims some interest in [39] and to said property so in possession of complainant by, through and under the said contract adverse to the claim of this complainant, and for the purpose of holding the same as second party and purchaser thereunder for his own benefit and for the benefit of the said Angele Beaudry, as such executrix and sole devisee, but that all right,

title, interest or claim whatsoever of the said defendant, Whitelaw, in or to the said contract, or in or to said property, is subject and subordinate to the rights of complainant herein as hereinbefore set forth.

XVI.

That the matter in dispute in this suit and the value of the said properties, the subject of the said contract, and of that portion thereof as to which title has not failed, as hereinbefore set forth, very much exceeds, exclusive of interest and costs, the sum or value of \$3,000.

WHEREFORE, complainant prays for a judgment against the defendant, Angele Beaudry, as executrix of the last will and testament of the said Frederick Beaudry, deceased, in the sum of \$304,169, together with interest thereon at the rate of 7% per annum from the 31st day of December, 1912.

And for the judgment and decree of this Court adjudging and decreeing that the complainant has a lien upon the properties hereinbefore in this bill of complaint described and upon all right, title and interest of the estate of the said Frederick Beaudry, deceased, in and to the said properties, or any of them, as security for the payment to complainant of the said sum with interest, as aforesaid. [40]

That in and by the said judgment and decree this Honorable Court determine that the said contract of July 21, 1906, hereinbefore referred to, has been rightfully rescinded by this complainant, and that by the said judgment and decree it enforce the said rescission.

That in and by the said judgment and decree there be determined and established the sum to be repaid

to complainant upon such rescission as a condition to the restoration by the complainant of what it has received under the said contract and for the repayment of which it has a lien on the properties, the subject of the said contract, and that it be so determined and established that the said sum is the sum of \$304,169, together with interest thereon at the rate of 7% per annum from the 31st day of December, 1912; and that it be adjudged and decreed that the said defendant, Angele Beaudry, as executrix, or individually, as aforesaid, is not entitled to the restoration of the said properties or of the possession thereof, except upon condition that there be repaid to complainant the said sum with interest, as aforesaid.

That in and by the said judgment and decree the lien of complainant hereinbefore referred to be foreclosed, and that it be ordered that the said properties and all right, title and interest of the estate of the said Frederic Beaudry, deceased, and of the said defendant, as executrix, and individually, in and to the said properties be sold in the manner provided by law to satisfy the said lien, and that out of the proceeds of the said sale, after the payment of the expenses of such sale, there be first paid to complainant the said sum with interest, as aforesaid, and that [41] until such sale the complainant shall be entitled to remain in possession of the said properties, and all thereof, with all the privileges given it by the said contract; and that judgment be entered herein against the said defendant, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, payable in due course of the

administration of the said estate, for any deficiency which may remain after applying all the proceeds of the sale of the said premises to the expenses of such sale and the amount due complainant as hereinbefore set forth; that the complainant may become a purchaser at said sale; and that the purchaser at said sale be let into the possession of the said premises on production of the sheriff's or commissioner's deed therefor.

Or that in the alternative it be further ordered, adjudged and decreed in and by the said judgment and decree that if the said defendant, Angele Beaudry, as executrix, or individually, shall fail, on or before a date to be fixed in the said decree, to pay to the said complainant the said sum with interest, as aforesaid, and all other sums which it may be found by the said Court that the said complainant is entitled to have paid to it upon the said rescission, as aforesaid, then the complainant shall be and become the owner of the said properties free from all claims of any kind thereon or thereto of the said estate of the said Fred Beaudry, deceased, or of the said Angele Beaudry, as executrix, or individually.

That it be further adjudged that all right, title and interest of the said defendant, George H. Whitelaw, in and to the said properties and in and to the said contract of [42] July 21, 1906, is subject and subordinate to the rights of the complainant, as in this bill of complaint alleged, and that in and by the said decree of foreclosure, as aforesaid, there shall be also foreclosed all rights of the said defendant,

George H. Whitelaw, in and to the said property and the said contract.

And the said defendants, and each of them, their agents, attorneys, servants and employees, shall, by the decree of said Court herein be perpetually stayed and enjoined from making or asserting any claim of title in and to the said properties, or any of them, except subject to the rights of the complainant therein, as in this complaint set forth, and that the said defendants, and each of them, their agents, attorneys, servants and employees be so restrained and enjoined from attempting to enforce as against this complainant any forfeiture of its rights under the said contract, or in or to the said properties, or any portion thereof, or from seeking to obtain possession of the said properties, or any portion thereof, otherwise than upon condition that there is first repaid to this complainant the said sum of \$304,169, with interest as aforesaid, and all other sums which it may be found that the said complainant is entitled to have paid to it upon the rescission of the said contract, as aforesaid, and from maintaining any suits, actions or proceedings to that end.

And that complainant may recover its costs and expenses herein, and for such other and further relief as the equity of the case may require and to your Honors may seem meet. [43]

And may it please your Honors to grant unto your orator writs of subpoena to be issued out of and under the seal of this Honorable Court against Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, Angele

Beaudry, individually, and George H. Whitelaw, commanding all of them, and each of them, on a day certain and under a certain penalty in the said writ to be inserted, personally to be and appear before your Honors in this Honorable Court, and then and there full, true and perfect answer make to all and singular the premises, an answer under oath being hereby expressly waived; and further to stand, perform and abide by such further orders, directions and decrees therein as to your Honors may seem meet and agreeable to equity and good conscience.

THE TRINITY GOLD DREDGING &
HYDRAULIC COMPANY.

By McCUTCHEN, OLNEY & WILLARD,
Its Solicitors.

McCUTCHEN, OLNEY & WILLARD,
Solicitors for Complainant. [44]

Exhibit "A" [to First Amended Bill of Complaint].

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

No. 12,732.

In the Matter of the Estate of FREDERIC BEAUDRY, Deceased.

**Claim of the Trinity Gold Dredging & Hydraulic
Company.**

The undersigned, THE TRINITY GOLD DREDGING & HYDRAULIC COMPANY, a corporation, creditor of Frederic Beaudry, deceased, and of the estate of said Frederic Beaudry, deceased, hereinafter called the claimant, presents this its claim against the estate of said deceased to Angele

Beaudry, the executrix of the last will and testament of said Frederic Beaudry, deceased, and alleges as follows, to wit:

That the above-named claimant was organized as a corporation under the laws of the then Territory (now State) of Arizona on the 25th day of November, 1908, and ever since its organization as such has been and now is a corporation duly organized under the laws of the said State (formerly Territory) of Arizona, with its principal office at Tucson, in said State, and having an office for the transaction of its corporate business at Minneapolis, in the State of Minnesota. [45]

That the above-named deceased during his lifetime and on or about the 21st day of July, 1906, made and entered into an agreement in writing with one George H. Whitelaw, a copy of which said agreement is hereto attached, marked Exhibit "A," and made a part hereof.

That the Fred Beaudry named in and who executed the said agreement was the same person as the Frederic Beaudry, deceased, above named.

That since the execution of the said agreement, the parties thereto, or their successors in interest, have made and entered into various other agreements in writing modifying the said agreement of July 21, 1906, copies of which said modifying agreements are hereto attached, marked Exhibits "B," "C," "D," "E," and "F," and made a part hereof.

That after the execution of said agreement of July 21, 1906, and on or about the 20th day of August, 1907, the said George H. Whitelaw trans-

ferred and assigned the said agreement and all his interest therein and thereunder, and all his interest in and to the property, the subject of the said agreement, to one William D. Beam, one V. A. Whipple, and himself, the said George H. Whitelaw; that thereafter and heretofore the said Whitelaw, Beam and Whipple transferred and assigned the said agreement and all their interest therein and thereunder, and all their interest in and to the property, the subject of the said agreement, to The Trinity Gold & Timber Company, a corporation, Trinity Gold Milling Company, a corporation, and this claimant, The Trinity [46] Gold Dredging & Hydraulic Company; that thereafter and heretofore, and prior to the death of the said Frederic Beaudry, the said The Trinity Gold & Timber Company and the said Trinity Gold Milling Company transferred and assigned the said agreement and all their interest therein and thereunder, and all their interest in and to the property, the subject of the said agreement, to this claimant, The Trinity Gold Dredging & Hydraulic Company; that this claimant has become by mesne assignments the sole assignee and owner of the said agreement of July 21, 1906, and of all of the rights of the said Whitelaw as second party and purchaser under said agreement, and of all of the rights of the said Whitelaw in and to the property, the subject of the said agreement, and of all of the rights of the prior assignees and holders of said agreement in and under the said agreement, and in and to the property, the subject thereof, and now is such owner and assignee of said rights as purchaser and second party

under said agreement of July 21, 1906, and has been such owner and assignee since prior to the death of the said Frederic Beaudry; that in and by the various modifications of the said agreement of July 21, 1906, hereinbefore referred to, the times for making payments of the various instalments of the purchase price of the property, the subject of the said agreement, were changed and postponed, and the said modifications imposed other obligations on the purchaser thereunder for the payment and expenditure of other sums of money in connection with said agreement and the property, the subject thereof, than as provided in the said original agreement, but that none of said modifications affected or altered [47] in any way the obligation of the said Frederic Beaudry as first party in the said agreement to sell and convey the property, the subject of the said contract, by good and sufficient deed, free from all encumbrances, upon payment of the purchase price thereof by the second party at the times provided by the said agreement and its modifications, and performance by the second party of the terms and conditions of said agreement and its modifications on the part of the second party to be performed; that in addition to the express modifications of the said agreement hereinbefore referred to, the first party to the said agreement from time to time waived failures and delay on the part of the second party in making payments on account of the purchase price of the property, the subject of the said agreement, and on the 31st day of December, 1912, said agreement and its modifications were in full force and effect, and all instalments of

the purchase price which had theretofore, under the provisions of the said agreement, as so modified, become due and payable, had been paid by this claimant and its predecessors in interest as second party under the said agreement and had been accepted by the first party and his successors under said agreement, and under the terms of the said agreement and its modifications there remained to be paid of the purchase price of the property therein provided for only the sum of \$50,000, with interest thereon at the rate of 8% per annum from the 1st day of January, 1912, the said sum being payable under the said agreement, as so modified, on the 1st day of January, 1913. [48]

That in and by the said agreement of July 21, 1906, the said Frederic Beaudry, deceased, as first party therein, agreed to sell to the said Whitelaw and to his assigns who should succeed to the interest of said Whitelaw as second party and vendee in said agreement certain lands and properties situated in Trinity County, State of California, hereinafter described, and agreed to convey the same to said Whitelaw or his assigns, as aforesaid, upon the payment of the purchase price in the said agreement fixed, by good and sufficient deed, free from all encumbrances; that in and by the said agreement the said Frederic Beaudry did represent and guarantee that he was the sole owner of the real property, the subject of the said agreement, and of all the timber thereon, and of all improvements thereon, and fixtures and personal property belonging to and used in connection therewith; that the said lands and properties, the subject of the said agreement, were and are

located in Township 35 North, Range 8 West, Mount Diablo Base and Meridian, in said Trinity County, State of California, and are described as follows, to wit:

Certain gravel mines, together with the timber, the improvements thereon, and fixtures and personal property belonging to and used in connection therewith, including pipes, flumes, ditches, sawmills, block-mill, giants, tools, buildings, furniture and the first right to six thousand (6,000) inches of water from the East Fork of Stewarts Fork of the Trinity River, and water rights from Strobe Creek, including those certain mining claims and properties known as: [49]

Minersville No. 1, 160 acres more or less, patented.

Minersville No. 2, 160 acres more or less, patented.

Minersville No. 3, 160 acres more or less, patented.

Red Gulch, 140 acres more or less, patented.

Ridge, 160 acres more or less, patented.

Gassy Hill, 160 acres more or less, patented.

Head of Digger Creek, 160 acres more or less, patented.

Diener, 160 acres more or less, patented.

Diener No. 2, 160 acres more or less, unpatented.

Mule Creek Ridge, 160 acres more or less, unpatented.

Long Gulch, 120 acres more or less, unpatented.

Connection, 40 acres more or less, unpatented.

Sweet Gulch, 160 acres more or less, unpatented.

Little Mule No. 2, 160 acres more or less, unpatented.

Strope Creek, 160 acres more or less, unpatented.

Little Mule, 160 acres more or less, unpatented.

Greenhorn Flat, 160 acres more or less, Receiver's Receipt.

Greenhorn Flat No. 2, 160 acres more or less, Receiver's Receipt.

Greenhorn Gulch, 140 acres more or less, Receiver's Receipt.

Taylor Gulch, 160 acres more or less, Receiver's Receipt.

Lane Gulch, 160 acres more or less, Receiver's Receipt.

That as to the said mining claims opposite which, as hereinbefore set forth, the word "patented" occurs, the said Frederic Beaudry represented and guaranteed that the said mining claims had been patented, and that he was the sole owner in fee thereof; that as to the said mining claims opposite which, as hereinbefore set forth, the word "unpatented" occurs, the said Frederic Beaudry represented and guaranteed that he was the sole owner thereof as valid mining claims held by valid mining locations under the laws of the United States validly made; that as to the said mining claims opposite which, as hereinbefore set forth, the words "Receiver's Receipt" occurs, the said Frederic Beaudry represented and guaranteed that he was the sole owner of the said claims as valid mining claims held by valid mining locations under the laws of the United States validly made, and that Receiver's Receipts had been duly issued to him by the United

States Government as such owner under valid [50] applications for patent therefor from the United States Government, in pursuance of which said applications full consideration therefor had been paid to the United States Government; and in and by the said agreement the said Frederic Beaudry represented and guaranteed the validity of the patents thereon as to all those mining claims upon which patents had been issued, as hereinbefore set forth, and the validity of the locations and mining claims thereon as to those claims which were unpatented, and the validity of the mining claims and locations and Receiver's Receipts thereon as to those tracts upon which Receiver's Receipts had been issued, as hereinbefore set forth, and in and by the said agreement the said Frederic Beaudry guaranteed that upon the payment of the consideration provided for by the said agreement he would convey good and valid title, as aforesaid, to all of the said properties and mining claims, with the timber thereon, free from all liens and encumbrances.

That in and by the said agreement it was further provided that the second party thereto should make necessary improvements and repairs on the said property so as to put certain of the mining claims thereon in complete readiness for exploitation; also that on certain other property the purchaser should place a working hydraulic plant, build a new flume, enlarge the ditch for the purpose of carrying water to the said properties, build a wagon road to certain of the said properties, and put up a telephone along the line of the water ditch supplying the said prop-

erties with water and connect it with the main through telephone line, and that the purchaser should spend not less than \$10,000 in making such improvements. [51]

That in and by the said various modifications of the said agreement it was further provided that the purchaser should pay other expenses in connection with the said agreement and the properties thereby affected.

That up to the time of the rescission of the said agreement by this claimant, as hereinafter stated, this claimant and its predecessors in interest as second party and purchaser in and under the said agreement, as hereinbefore set forth, have at all times duly and punctually performed all the [52] obligations, terms, conditions and covenants of the said agreement, as modified, as hereinbefore set forth, on their part to be performed, and have made all the payments provided by the said agreement, as so modified, to be made up to the time of such rescission.

That this claimant and its predecessors in interest as second party and purchaser under said agreement, as hereinbefore set forth, have paid to the said Frederic Beaudry and to his estate, as principal of the purchase price provided by the said agreement, the sum of \$200,000, and as interest on deferred payments and as consideration for deferring the said payments on account of the said purchase price by the modifications of the said original agreement, as hereinbefore set forth, the further sum of \$20,950; that this claimant and its said predecessors in interest have further paid and expended upon the im-

provements provided to be constructed on the said property under the said agreement, as hereinbefore set forth, and for other expenses in connection therewith, as provided by the said contract and the various modifications thereof, hereinbefore provided for, a sum not less than \$83,219; that all said payments aggregating the sum of not less than \$304,169 were so made prior to the 1st day of March, 1912; that claimant and its predecessors in interest, as aforesaid, have further expended in the care and management of said property, and in the operation of the said mining claims, and prior to the 1st day of December, 1911, further large [53] sums which at all times have been and are largely in excess of any and all receipts from said operation.

That at the time of the execution of the said agreement of July 21, 1906, said Frederic Beaudry was not, and at no time since said date has he, nor has the estate of said Frederic Beaudry, deceased, nor has the executrix of his last will and testament, nor has the sole devisee under his will, been the sole owner in fee, or the owner in fee at all, of those of the mining claims hereinbefore referred to, designated as Mule Creek Ridge, Long Gulch, Greenhorn Flat, Greenhorn Flat #2, Greenhorn Gulch, Taylor Gulch and Lane Gulch, or any thereof; as valid mining claims held by valid mining locations or otherwise; that the locations and mining claims on the said claims last above named were not at any of said times, and are not, and never have been, valid mining claims held by valid mining locations under the laws of the United States validly made, nor has any

one of them at any of said times been, nor is any one of them, a valid mining claim held by valid mining locations under the laws of the United States validly made; that the said Frederic Beaudry was not at the time of the making of said agreement of July 21, 1906, nor at any time thereafter up to the time of his death, nor since his said death has his said estate, nor his executrix, nor his sole devisee, been able to, nor is the said estate, nor the said executrix, nor the said sole devisee, now able to, convey a good and valid title, or any valid title, to any of the said mining claims hereinbefore in this paragraph specifically designated, whether [54] with or without timber thereon, or to any of the said properties or mining claims; that at no time since the making of the said agreement and up to the time of his death was the said Frederic Beaudry, nor since his said death has the estate of the said Frederic Beaudry, deceased, nor has his said executrix, nor his sole devisee, been, nor are they, or any of them, now able to comply with the terms, conditions and provisions of the said agreement of July 21, 1906, on the part of the said Frederic Beaudry to be performed in this: that at none of the said times were they, or any of them, able, nor are they, or any of them, now able, to convey the said mining claims hereinbefore in this paragraph of this claim specifically designated, or any thereof, by good and sufficient deed, nor by any deed at all.

That since the 1st day of March, 1912, and since the last payment by this claimant under the said agreement, as hereinbefore set forth, or on account

of the purchase price of the properties, the subject of the said agreement, final decision has been rendered by the United States Government on applications for patent made on behalf of the said Frederic Beaudry under the mining locations hereinbefore referred to as the Mule Creek Ridge and Long Gulch mining claims to the effect that the said mining claims have not been validly located as such, and that they were not and are not valid mining claims, and that the said Frederic Beaudry has not, nor has his estate, any right, title, estate or interest therein or thereto, and that the said lands covered by the said mining claims are public lands of the United States, [55] free of all claims thereto on the part of the said Frederic Beaudry or of his estate.

That since the said 1st day of March, 1912, the United States Government has further ruled and decided upon applications for patent on behalf of the said Frederic Beaudry to the United States Government covering the claims hereinbefore in this claim described as the subject of Receiver's Receipts that the entries of the said claims so covered by the said Receiver's Receipts were not and are not valid mining claims or held as such under the laws of the United States.

That the aforesaid rulings and decisions of the United States Government have never been revoked, canceled or set aside, and are now in full force and effect, and since the said rulings neither the estate of the said Frederic Beaudry, deceased, nor his executrix, nor said sole devisee, has acquired, nor have they, or any of them, any right whatsoever to

the said Mule Creek Ridge, Long Gulch, Greenhorn Flat, Greenhorn Flat #2, Greenhorn Gulch, Taylor Gulch and Lane Gulch mining claims, or any of them, whether as mining claims, or otherwise, and the said property and premises belong to and are the property of the United States; that the said properties lie within the limits of a forest reserve known as the Shasta National Forest, duly set apart as such under the laws of the United States.

That under the said agreement of July 21, 1906, as so modified, as hereinbefore set forth, the last instalment [56] of the purchase price therein provided for was provided to be paid on the 1st day of January, 1913, as hereinbefore set forth; that the said last instalment amounts, as aforesaid, to the sum of \$50,000, with interest thereon at the rate of 8% per annum from the 1st day of January, 1912; that on or about the 1st day of December, 1912, the executrix of the last will and testament of said Frederic Beaudry, deceased, caused to be served upon this claimant a notice that, unless said balance was paid on the 1st day of January, 1913, she would terminate said agreement of sale and would retake and retain all right, title and interest in and to the said property, without accounting to this claimant or paying to it any of the considerations or payments made, as hereinbefore set forth, by claimant and its predecessors in interest under said agreement.

That the value of all the properties, the subject of the said agreement of July 21, 1906, has at all times consisted, and by all parties to said agreement has at all times been known to consist, chiefly in their value

as placer mining properties and for the timber situated thereon; that the said properties, including said Mule Creek Ridge, Long Gulch, Greenhorn Flat, Greenhorn Flat #2, Greenhorn Gulch, Taylor Gulch and Lane Gulch mining claims, constitute a contiguous body of land and form one entire property, every part of which is a material and substantial portion of the whole, and so known by all parties to [57] constitute such material and substantial portion; that a failure of title to any portion of the said property, and particularly a failure of title to the said mining claims known as the Mule Creek Ridge and Long Gulch mining claims, materially and substantially breaks the continuity of the said tract of land and impairs in a very substantial and considerable degree the value of the said properties.

That a failure of title to the said Mule Creek Ridge and Long Gulch mining claims breaks entirely the continuity of the said tract of land and divides the same into two distinct and separate parcels, and adds very considerable difficulty in the working and operation of the said property as mining claims and in the cutting and removal of the timber therefrom.

That the value of the said properties, the subject of the said agreement of July 21, 1906, omitting therefrom the said mining claims known as Mule Creek Ridge, Long Gulch, Greenhorn Flat, Greenhorn Flat #2, Greenhorn Gulch, Taylor Gulch and Lane Gulch, has been at all times since said 21st day of July, 1906, and is now, less than what the value of the said property, including the said mining claims, would be, by a sum in excess of the sum of

\$60,000, and the impairment in value of the entire tract of land, the subject of said agreement of July 21, 1906, by the exclusion therefrom of the said mining claims last hereinbefore specifically enumerated, has at all times been, and is now, in excess of the amount still remaining unpaid of the purchase price of the said properties as fixed in the [58] said agreement, as so modified, and the damage suffered by this claimant by the failure of the title to the said mining claims has been and is in excess of the amount of the said purchase price so still remaining unpaid.

That the total acreage of the property covered by said agreement was and is 3,160 acres; that the total acreage of the said Mule Creek Ridge and Long Gulch mining claims was and is 280 acres; that the total acreage of the said Greenhorn Flat, Greenhorn Flat #2, Greenhorn Gulch, Taylor Gulch and Lane Gulch mining claims was and is 780 acres.

That the officers of this claimant corporation are all residents of the City of Minneapolis, State of Minnesota, and nonresidents of the State of California, and at no time since the 1st day of December, 1911, and until on or about the 23d day of December, 1912, have any of said officers been in the State of California; that said claimant and its predecessors in interest did not know or learn, nor did any of them know or learn, of the said defects in the title of the said Frederic Beaudry and his estate to the said properties until subsequent to the 1st day of March, 1912, and until shortly before the rescission of said agreement, as hereinafter set forth; that by

reason of the inability of the estate of the said Frederic Beaudry, deceased, and of the executrix of the last will and testament of the said estate, as hereinbefore set forth, to comply with the provisions of said agreement of July 21, 1906, on their part to be performed, and by reason of the failure of the consideration for the said agreement, as hereinbefore set forth, [59] and promptly upon the discovery of such failure of consideration and in due time and before the time for making final payment of the purchase price of the said properties, as provided in the said agreement of July 21, 1906, and its various modifications, as hereinbefore set forth, and on or about the 31st day of December, 1912, this claimant rescinded the said agreement and caused to be served upon the executrix of the last will and testament of said Frederic Beaudry, deceased, and upon the sole devisee under the said last will and testament of said deceased, a notice of rescission wherein and whereby this claimant notified said executrix and devisee that it did rescind the said agreement of July 21, 1906, because of such failure of consideration, and because the said Frederic Beaudry had not been in his lifetime, and the said executrix and the said devisee was not and would not be, able to convey the properties mentioned in said agreement and upon the consideration for which the said payments had been made by the claimant, as aforesaid; that this claimant did then and there offer to restore to said executrix and devisee everything of value which it had received under the said agreement upon condition that the said executrix and devisee did likewise; that this

claimant then and there offered to restore to said executrix and devisee all the property which had come into the possession of this claimant under the said agreement and to restore and reconvey all rights received by this claimant thereunder on the condition that the said executrix and devisee repay to this claimant all sums paid by this claimant and its predecessors in interest under the said agreement as and for the purchase price therein provided for and for improvements on the said property made in pursuance of the provisions of the said agreement; that the said amounts [60] so to be repaid were stated and fixed in said offer at the sum of \$200,000, provided the said offer were accepted on or about the 6th day of January, 1913; that in and by the said notice of rescission this claimant stated further that in case such offer were not so accepted on or about the said date, the claimant reserved the right to require, as a condition for the restoration of the said property by complainant, the payment to it of such further sums, in addition to the said sum of \$200,000, as the claimant might be entitled to.

That the said executrix and devisee did not on or about the said 6th day of January, 1913, accept, nor has she at all accepted, the said offer of this claimant or repaid to this claimant the said sums of money, or any part or portion thereof.

That this claimant hereby offers to restore to the said executrix and devisee everything of value which it has received under the said agreement of July 21, 1906, and the various modifications thereof hereinbefore referred to, upon condition that the said ex-

executrix and devisee do likewise, that is to say, upon condition that there be repaid to this claimant the sum of \$304,169, with interest thereon at the rate of 7% per annum from the 31st day of December, 1912.

That this claimant has, by reason of the facts hereinbefore set forth, an equitable lien upon all the right, title and interest of said Frederic Beaudry, deceased, and of said estate, and of the executrix thereof, and of the sole devisee thereof, in and to the said properties named in said agreement [61] and hereinbefore described, as security for the repayment to this claimant of the sums expended by it, as aforesaid, and as a condition precedent to the restoration by this claimant to said estate, or to said executrix and devisee, of the rights and properties so held by this claimant under said agreement.

That this claimant presents, accordingly, its claim against the estate of said Frederic Beaudry, deceased, for the said sum of \$304,169, with interest thereon at the rate of 7% per annum from the 31st day of December, 1912, and for the enforcement of its lien therefor, as aforesaid, against the said property, and avers that the facts in regard to the said claim and all items thereof are as hereinbefore in this claim set forth; that all the items of the said claim, except those relating to interest hereafter accruing, are now due; that this claimant had no notice to creditors of the estate of the said Frederic Beaudry, deceased, as provided in Chapter VI of Title XI, Part III, of the Code of Civil Procedure of the State of California, by reason of being out of the State of California; that in so far as said claim is founded

on any instrument, a copy of such instrument is hereto attached; that the said claim is secured by an equitable lien on the property described in said agreement of July 21, 1906, as hereinbefore set forth, and by reason of the facts hereinbefore set forth; that the said claim is not contingent.

IN WITNESS WHEREOF, the said The Trinity Gold Dredging [62] & Hydraulic Company has caused this claim to be executed this 22 day of January, 1913, by its proper officers thereunto duly authorized.

THE TRINITY GOLD DREDGING &
HYDRAULIC COMPANY,

By VINET A. WHIPPLE,

President,

[Corporate Seal.] By LOUIS C. KONKLE,

Secretary,

Claimant. [63]

State of Minnesota,

County of Hennepin,—ss.

Louis C. Konkle, being first duly sworn, deposes and says:

That he is an officer, to wit, the Secretary, of The Trinity Gold Dredging & Hydraulic Company, a corporation, the claimant named in the foregoing claim, and whose claim is hereby presented to the executrix of the last will and testament of Frederic Beaudry, deceased; that affiant makes this affidavit on behalf of said corporation for the reason that the claimant is a corporation, and for the further reason that the facts constituting the said claim are peculiarly within the knowledge of affiant; that affiant has read the

foregoing claim and statement of claim and knows the contents thereof, and the same is true and correct to affiant's knowledge; that the particulars of such claim, as set forth in the foregoing statement, are, and each of them is, true; that the amount thereof is justly due; that no payments have been made on the amount of said claim which are not credited and that there are no offsets to the same to the knowledge of affiant;

That the said claimant is a corporation organized under the laws of the State (formerly Territory) of Arizona, with its principal office at Tucson, in said State, and having an office for the transaction of its corporate business at Minneapolis, in the State of Minnesota, and that at no time since its organization has the said corporation had, nor has it now, any office of any kind in the State of California, [64] and that the said corporation has at all times since its organization been, and it is now, out of and absent from the State of California; that at all said times all of the officers of the said corporation have resided, and now reside, outside of the State of California, and that at no time since prior to the death of Frederic Beaudry, deceased, on or about the 16th day of December, 1911, until on or about the 22d day of December, 1912, was any of the officers of the said corporation in the said State of California, and that at all of said times from the date of the death of the said deceased to the said 22d day of December, 1912, the said officers, and all of them, were absent from and out of the State of California; that at no time prior to the said 22d day of December, 1912, did the

said corporation, or any officer thereof, have any knowledge or notice, as provided in Chapter VI of Title XI, Part III, of the Code of Civil Procedure of the State of California; that at no time prior to said 22d day of December, 1912, did any officer of the said corporation have any knowledge or notice of any notice by the executrix of the last will and testament of said deceased to the creditors of said decedent, requiring all persons having claims against him to exhibit them, with the necessary vouchers, to such executrix, or any knowledge or notice of the publication of any such notice, or of the fact that any such notice had been published or given; that said claimant had no knowledge or notice, as aforesaid, by [65] reason of the fact that it was out of the State of California. And affiant further states that the original instruments, of which the hereto attached Exhibits "A," "B," "C," "D," "E" and "F" are copies, cannot now be found among the papers of the said claimant, The Trinity Gold Dredging & Hydraulic Company, nor anywhere, and that affiant has made diligent search for the same and each of the same, and that the same and each of the same are either lost or destroyed.

LOUIS C. KONKLE.

Subscribed and sworn to before me this 22d day of January, 1913.

[Notarial Seal]

EDYTH MEYERS,

Notary Public in and for the County of Hennepin,
State of Minnesota.

My commission expires June 8, 1917.

State of Minnesota,
County of Hennepin,—ss.

I, P. S. Neilson, Clerk of the District Court for the County of Hennepin, Fourth Judicial District of the State of Minnesota, the same being a court of record and having a seal, do hereby certify that Edyth Meyers, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument, was, at the time of taking such proof or acknowledgment a notary public, in and for said county, residing in said county, and duly authorized by the laws of said State to take and certify acknowledgments or proofs of deeds of lands in said State, that I am well acquainted with the handwriting of the said notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at the City of Minneapolis, in said County, this 22d day of Jan., A. D. 1913.

[Seal]

P. S. NEILSON,
Clerk.

By C. F. Williams,
Deputy. [66]

EXHIBIT "A."

This Agreement, made and entered into this 21st day of July, 1906, A. D., by and between FRED BEAUDRY, of the City and County of San Francisco, State of California, the party of the first part,

and GEORGE H. WHITELOW, of Delta, State of California, the party of the second part;

WITNESSETH:

The said FRED BEAUDRY, the party of the first part, *being the sole owner and in possession of certain gravel mines*, together with the timber, the improvements thereon and fixtures and personal property belonging to and used in connection therewith, including pipes, flumes, ditches, saw-mills, block-mill, giants, tools, buildings, furniture and the first right to six thousand (6000) inches of water from the East Fork of Stewarts Fork of the Trinity River, and water rights from Strope Creek, all located in township 35, North of Range 8 West, Mount Diablo Base and Meridian in Trinity County, Calif.; *including these certain mining claims and properties known as:*

Minersville No. 1, 160 acres more or less, patented.

Minersville No. 2, 160 acres more or less, patented.

Minersville No. 3, 160 acres more or less, patented.

Red Gulch, 140 acres more or less, patented.

Ridge, 160 acres more or less, patented.

Gassy Hill, 160 acres more or less, patented.

Head of Digger Creek, 160 acres more or less, patented.

Diener, 160 acres more or less, patented.

Diener No. 2, 160 acres more or less, unpatented.

Mule Creek Ridge, 160 acres more or less, unpatented.

Long Gulch, 120 acres more or less, unpatented.

Connection, 40 acres more or less, unpatented.

Sweet Gulch, 160 acres more or less, unpatented.

Little Mule No. 2, 160 acres more or less, unpatented.

Strope Creek, 160 acres more or less, unpatented.

Little Mule, 160 acres more or less, unpatented.

Greenhorn Flat, 160 acres more or less, Receiver's Receipt.

Greenhorn Flat #2, 160 acres more or less, Receiver's Receipt.

Greenhorn Gulch, 140 acres more or less, Receiver's Receipt.

Taylor Gulch, 160 acres more or less, Receiver's Receipt.

Lane Gulch, 160 acres more or less, Receiver's Receipt.

containing a total area of 3160 acres more or less of which 1260 acres have been patented by the United States Government.

Now, therefore, Fred Beaudry, the said party of the first part, in consideration of one (1) dollar to him in hand paid, receipt of which is hereby acknowledged does hereby grant to the said party of the second part an option to purchase the above described mines and mining claims, lands and properties, under the following conditions, to wit: [67]

The party of the second part will enter upon and take possession of the said properties except one house with furniture known as the Fourtlette House, yard and barn, and agrees and binds himself to expend not less than Ten Thousand (\$10,000) Dollars

in improvements on said properties, in the following manner:

First, to make such necessary improvements and repairs as is necessary to put the Chicken Flat workings in complete readiness for exploitation; also to place a working hydraulic plant, consisting of pipes, giants, tools, houses, etc., on the Greenhorn Placers known as Greenhorn Flat No. 2, Greenhorn Gulch, Taylor Gulch, Lane Gulch, Strope Creek, Little Mule; to build a new flume and enlarge the ditch from the East Fork ditch to the Greenhorn Placer in order to carry safely not less than three thousand inches of water; to build a wagon road to the Greenhorn placers; to put up Telephone on ditch route and connect it to the Fairview Line, and to do any and all work in good workmanlike manner. And it is especially understood that the amount of \$10,000.00 shall be expended in fitting up and in improvements of said premises and not be considered as running expenses on the mine. Any sum expended in improvements exceeding the above amount of Ten Thousand (\$10,000) Dollars shall be optional with the party of the second part, and in no wise obligate the party of the first part.

The party of the first part reserves the right for Theodore Ebendorf to prospect on the property until the payment of \$62,500 has been paid, provided that he does not interfere with the interest of the party of the second part.

The party of the first part hereby grants the right to use all of said properties except that above reserved for the purpose of prospecting, developing

and working said mines, and when sixty-two thousand five hundred (\$62,500) dollars has been paid as herein provided for, he will then give complete possession of all of said properties including said Fourtlette House. He also grants to the party of the second part the right to cut and saw into lumber such timber as shall be needed to re-construct flumes, repair buildings and for the working of the mine only, the said party of the second part will not have the right to sell any timber or lumber until full payment of the properties shall have been made.

The total price of said properties shall be and is Two Hundred and Fifty Thousand (\$250,000) Dollars to be paid as follows:

Ten Thousand (\$10,000) Dollars to be paid on or before the 10th day of August, 1907; Fifty-two Thousand and Five Hundred (\$52,500) Dollars on or before the 10th day of October, [68] 1907; Sixty-two Thousand and Five Hundred (\$62,500) Dollars on or before the 10th day of Oct., 1908; Sixty-two Thousand and Five Hundred (\$62,500) Dollars on or before the 10th day of October, 1909; Sixty-two Thousand and Five Hundred (\$62,500) Dollars on or before the 10th day of October, 1910.

After One Hundred and Twenty-five Thousand (\$125,000) dollars shall have been paid to the party of the first part, the party of the second part may have the right to take the deed from escrow by giving notes for balance remaining unpaid, life of the notes to correspond with above specified time of payments secured by mortgage of first lien on all of the above properties, interest at the rate of five per cent per

annum net, the party of the second part agrees to pay any additional amount of interest charged by State or County on said notes to be paid on all unpaid amounts not paid on October 10th, 1908, from that time until paid. The party of the second part obligates himself to pay all taxes of any kind *may* levied upon mortgages or on the above described properties. It is further agreed by the party of the first part to at once upon request of said party of the second part to make a good and sufficient deed for all of said properties, *free from all incumbrances*, with escrow instructions in accordance with above stipulations and place same in some bank in San Francisco or elsewhere agreed by both parties.

The hydraulic elevating operations are to be on the Southeast side below the County road and about Two Hundred (200) feet below the fence and wagon shed, at the Junction of Digger Creek and the East Fork of the Stewarts Fork of the Trinity River, that is to say, the fields as enclosed must not be worked under this agreement, before the payment of Sixty-two Thousand and Five Hundred (\$62,500) dollars has been paid.

It is further agreed between the parties that said party of the first part shall not be responsible in any way for any debts contracted by said party of the second part in or about said properties, and that he may post such notices as he shall see fit upon the said mines in order to protect him from any liens or charges.

Said party of the second part further covenants and agrees that any and all work which he may do or

cause to be done or performed upon said properties by virtue of this agreement shall be done and performed in a good substantial and workmanlike manner. Said party of the second part further covenants and agrees that in the event he fails to make any of the payments herein specified at the time the same becomes due and payable [69] or to carry out the covenants in accordance to this agreement, then this contract shall become null and void, and that thereupon said party of the first part shall be immediately released from any obligation either in law *in equity* to convey said properties or any part or portion thereof, and that any and all moneys paid to said party of the first part shall be forfeited to said party of the first part as liquidated damages discharging the party of the second part from any obligations and that the possession of said properties shall be immediately delivered to said party of the first part without notice or process at law and that tools, machineries, improvements of all kind, stock, placed thereon, shall become the property of the party of the first part free and clear of any charge or claim against the same.

Said party of the second part further covenants and agrees to pay all expenses for prospecting, examining the mines and the title of said properties.

It is clearly understood by both parties that all the tools, saw-mill, pipes, giants, machineries of any kind enumerated in the invoice are to be left on the said properties, in as good condition as when accepted by the party of the second part, in the event he fails to comply with the hereinabove conditions except

natural wear and tear.

This agreement shall be binding upon and inure to the benefit of the parties herein, their heirs, executors, administrators, assigns and successors in interest.

None of said water, tools or personal properties shall be used for any other property except that hereinbefore described, except until One Hundred Thousand (\$100,000) Dollars of said purchase price has been paid.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, the day and year first above written.

(Signed) FRED BEAUDRY.

(Signed) C. H. WHITELOW.

Witnesses:

J. BOUVIER.

ANGELE BEAUDRY. [70]

EXHIBIT "B."

Callahan, California, Aug. 8, '07.

SUPPLEMENT AGREEMENT.

We, the undersigned agree that the *made* and time of payments recited in a contract between us, and attached hereto, and of date of July 21st, 1906, shall be changed to read as follows:

(\$5,000) Five Thousand Dollars on or before Aug.
20/1907;

(\$7,500) Seven Thousand Five Hundred Dollars
on or before Sept. 1/07;

(\$10,000) Ten Thousand Dollars on or before
January 10th, 1908;

(\$5,000) Five Thousand Dollars on or before
March 10th, 1908;

(\$5,000) Five Thousand Dollars on or before
April 10th, 1908;

(\$5,000) Five Thousand Dollars on or before May
10th, 1908;

(\$25,000) Twenty-five Thousand Dollars on or be-
fore June 10/1908;

(\$62,500) Sixty-two Thousand Five Hundred Dol-
lars on or before January 10th, 1909;

(\$62,500) Sixty-two Thousand Five Hundred Dol-
lars on or before January 10th, 1910;

(\$62,500) Sixty-two Thousand Five Hundred Dol-
lars on or before January 10th, 1911;

all with the full and plain understanding that all the
other terms and conditions of the said contract are to
remain as they are and unchanged except as to mode
and time of payment and with the further under-
standing that the time of the last payment is to be
expended so as to keep in full force and effect the
original contract.

FRED BEAUDRY.

G. H. WHITELOW.

Witnesses:

ED. BOUVIER.

M. J. BOUVIER. [71]

EXHIBIT "C."

ESCROW AGREEMENT.

To the Pioneer Trust Company of Kansas City,
Missouri.

There is herewith deposited by me the undersigned
Fred Beaudry of the City and County of San Fran-

cisco, State of California, with the Pioneer Trust Company of Kansas City, Mo., a certain deed, bearing date the 31st day of October, 1906, made by me, Fred Beaudry, to Geo. H. Whitelaw, of Delta, State of Colorado, granting and conveying unto the latter.

All those certain gravel mines, together with the timber and improvements thereon and all fixtures and personal property, belonging to and used in connection therewith, including pipes, flumes, ditches, sawmill, block-mill, giants, tools, buildings, furniture, and the first right to six thousand (6000) inches of water from the East Fork of Stewarts Fork of the Trinity River and water rights from Strope Creek, all located in Township 35, North of Range 8 West, Mount Diablo Base and Meridian in Trinity County, State of California, including all those certain mining claims and properties known as:

Minersville No. 1, 160 acres more or less, patented.

Minersville No. 2, 160 acres more or less, patented.

Minersville No. 3, 160 acres more or less, patented.

Red Gulch, 140 acres more or less, patented.

Ridge, 160 acres more or less, patented.

Gassy Hill, 160 acres more or less, patented.

Head of Digger Ck., 160 acres more or less, patented.

Diener, 160 acres more or less, patented. [72]

Diener No. 2, 160 acres more or less, unpatented.

Mule Creek Ridge, 160 acres more or less, unpatented.

Long Gulch, 120 acres more or less, unpatented.

Sweet Gulch, 160 acres more or less, unpatented.

Connection, 40 acres more or less, unpatented.

Little Mule No. 2, 160 acres more or less, unpatented.

Strope Creek, 160 acres more or less, unpatented.

Little Mule, 160 acres more or less, unpatented.

Greenhorn Flat, 160 acres more or less, Receiver's Receipt.

Greenhorn Flat #2, 160 acres more or less, Receiver's Receipt.

Greenhorn Gulch, 140 acres more or less, Receiver's Receipt.

Taylor Gulch, 160 acres more or less, Receiver's Receipt.

Lane Gulch, 160 acres more or less, Receiver's Receipt.

containing a total area of three thousand one hundred and sixty (3,160) acres more or less of which twelve hundred and sixty (1260) acres have been patented by the United States Government.

This deed is now delivered to you in escrow to be held by your bank subject to the following terms and conditions: The said Geo. H. Whitelaw is to pay unto your bank for me the following sums of money at the following designated times, the total price of the properties described in said deed shall be and is two hundred fifty thousand (250,000).

Five thousand dollars (\$5000) on or before August 20th, 1907, which have been paid. Seven thousand five hundred dollars (\$7500) on or before

September 15th, 1907, which have been paid. [73]
Ten thousand dollars (\$10,000) on or before January
10th, 1908.

Five thousand dollars (\$5,000) on or before March
10th, 1908.

Five thousand dollars (\$5,000) on or before April
10th, 1908.

Five thousand dollars (\$5,000) on or before May
10th, 1908.

Twenty-five Thou. (\$25,000) on or before June 10th,
1908.

Sixty-two Thousand Five Hundred Dollars (\$62,-
500) on or before January 10th, 1909.

Sixty-two Thousand Five Hundred Dollars (\$62,-
500) on or before January 10th, 1910.

Sixty-two Thousand Five Hundred Dollars (\$62,-
500) on or before January 10th, 1911.

After the sum of One Hundred and Twenty-five
Thousand Dollars (\$125,000) on account of the said
purchase price shall have been paid to the Pioneer
Trust Company of Kansas City, for the account of
the undersigned, the said Geo. H. Whitelaw or his
assigns may have the right to withdraw the said deed
from escrow and shall be entitled to the delivery of
the said deed upon giving satisfactory notes for the
balance remaining unpaid, which notes shall be made
payable at the same periods corresponding with the
unpaid payments hereinabove stipulated, provided
said notes are secured by a first lien mortgage on all
of the property described in the deed hereinabove
referred to, interest to be at the rate of five per cent
(5%) per annum net.

The said Geo. H. Whitelaw or assign to pay any additional amount of interest which may be chargeable for any and all state or county taxes assessed upon the said mortgage which may be due [74] on all amounts not paid before the 10th day of January, 1909, and upon all amounts not paid subsequent to the last-mentioned date. The purchaser is to obligate himself to pay all taxes of any kind which may be levied or assessed upon the said mortgage or upon the property described in the said mortgage or upon any of the improvements situated thereon.

When all such payments shall have been made in the sums and at the times herein specified or when all the conditions herein set forth shall have been carried out by the said purchaser, the said Pioneer Trust Company of Kansas City, Missouri, is hereby instructed to deliver the said deed to the said purchaser, or his assigns, or upon his written order. If all of the said installments of the purchase price be not paid in the amounts and at the times specified and there shall be default in any of such payments required to be made to said Bank by the said purchaser or his assigns, for the period of ten (10) days next after any of said dates, then and in that event said deed on demand by the undersigned, shall be thereby delivered by the said Bank to Fred Beaudry the undersigned.

The escrow agreement and the instruction therein set forth are drawn up pursuant to the terms of a certain contract entered into by and between Fred Beaudry and Geo. H. Whitelaw, on the 21st day of July, 1906, a copy of which is hereto annexed and made a part hereof.

Witness my hand this 11th day of December,
A. D. 1907.

FRED BEAUDRY. [75]

I, the undersigned, the party grantee named in the deed this day deposited with the Pioneer Trust Company of Kansas City in escrow and more fully described in the following escrow agreement, hereby recognize the foregoing as a correct statement of the terms of the escrow and I hereby subscribe the same and acknowledge myself to be bound thereby.

Witness my hand this 11th day of December, A. D. 1907.

GEO. H. WHITELOW.

The foregoing trust is hereby accepted and the said deed specified in the foregoing instructions is accepted subject to the conditions in the foregoing escrow agreement *stejoulated*.

Kansas City, Mo., January 27th, 1908.

PIONEER TRUST COMPANY,

By B. H. McGARVEY,

Treasurer. [76]

EXHIBIT "D."

San Francisco, January 15/09.

Pioneer Trust Company,

Kansas City, Mo.

Dear Sir:

Referring to the Deed, dated October 31, 1909, from myself to Geo. H. Whitelaw, of Delta, State of Colorado, and an Agreement, dated July 21, 1906, deposited in escrow with you, and accompanied by certain instructions, I desire to say, that Geo. H. Whitelaw desires to somewhat defer the payment

which was due January 10th, 1909, and amounting to the sum of Sixty-two Thousand and Five Hundred Dollars (\$62,500.00).

I have consented to defer and somewhat change the terms and conditions of the payment of \$62,500.00 which was due on January 10th, 1909, and in accordance with such change I hereby instruct you as follows:

Mr. Whitelaw is to pay you for my credit, the sum of Ten Thousand Dollars (\$10,000) net cash, and without grace, on the First day of February, 1909; he is to further pay to you for my credit, the sum of Twelve Thousand and Five Hundred Dollars (\$12,500.00), net cash, and without grace, on the fifteenth day of February, 1909; and on February 15th, 1909, Mr. Whitelaw is also to deliver to you for me, his Promissory Note for the sum of Five Thousand Six Hundred and Twenty-five Dollars (\$5,625.00) payable on May 10th, 1909, together with interest thereon at the rate of five per cent (5%) per annum, and on said Fifteenth day of February, 1909, Mr. Whitelaw is also to deliver to you a receipt, in my favor, for the sum of Three Thousand One Hundred and Twenty-five (\$3,125.00), being on account of commission at the rate of ten per cent (10%) upon the aggregate sum of Thirty-one Thousand Two Hundred and Fifty Dollars (\$31,250). The Promissory Note which is to be delivered to you is to be drawn in my favor, and is to read substantially as follows:

“\$5625.00. San Francisco, Cal., Jan. 15/1909.-

On or before May 10th, 1909, after date, without

grace, for value received, I promise to pay to FRED BEAUDRY, or order at San Francisco, California, the sum of Five Thousand Six Hundred and Twenty Five Dollars (\$5,625.00), in United States Gold Coin; together with interest thereon at the rate of five per cent (5%) per annum, from the Fifteenth day of February, 1909, until paid.

(Signed) GEO. H. WHITELAW."

In other words, on February 1st, 1909, Mr. Whitelaw is to pay to you for my credit the sum of Ten Thousand Dollars (\$10,000.00) and on February 15th, 1909, he is to pay to you the further sum of Twelve Thousand and Five Hundred Dollars (\$12,500.00), and on the said last mentioned date is to deliver to you the Promissory Note and the Receipt for commission above mentioned; the payment of Ten Thousand Dollars (\$10,000) in payment of Twelve Thousand and Five Hundred Dollars (\$12,500), the Promissory Note for Five Thousand Six Hundred and Twenty-five Dollars (\$5,625.00), and the receipt for [77] commission of Three Thousand and One Hundred and Twenty-five Dollars (\$3,125.00), will aggregate the sum of Thirty-one Thousand, Two Hundred and Fifty Dollars (\$31,250), or one-half of the amount of the payment which was due January 10th, 1909.

If Mr. Whitelaw makes the payment of Ten Thousand Dollars (\$10,000) net cash, on February 1st, 1909, you are authorized to receive the sum of Twelve Thousand Five Hundred Dollars (\$12,500) on February 15, 1909, and the Promissory Note and the Receipt for Commission, above named; but if Mr.

Whitelaw fails to make the payment of Ten Thousand Dollars (\$10,000) on February 1st, 1909, then you are not authorized to receive any further payments, or the Promissory Note and Commission Receipt, and are to return the Deed and Agreement to me.

If Mr. Whitelaw shall have paid the Ten Thousand Dollars (\$10,000) on February 1st, 1909, and shall also have paid the Twelve Thousand Five Hundred Dollars (\$12,500) due on February 15th, 1909, and also shall have delivered to you the Promissory note and the Commission Receipt above mentioned; then, and in that event you are further authorized to receive from the said George H. Whitelaw, at any time on or before July 1st, 1909, the further sum of Thirty-one Thousand, Two Hundred and Fifty Dollars (\$31,250), together with interest thereon at the rate of five per cent (5%) per annum, from January 10, 1909, until paid.

All of the payments of money hereinbefore mentioned are absolutely without grace, and must be paid on or before the dates mentioned, in United States Gold Coin.

These arrangements have been made between myself and Mr. Whitelaw relative to the payment which was due on January 10th, 1909, and amounting to the sum of Sixty-two Thousand and Five Hundred Dollars (\$62,500.00). In all other respects, the Agreement, dated July 21st, 1906, between Mr. Whitelaw and myself is to remain in full force, operation and effect, and these supplemental instructions are in no wise to alter the general terms and conditions

thereof; but these instructions are simply to apply to the matter of the payment which was due on January 10th, 1909.

I, heretofore, and on December 21st, 1908, sent you instructions relating to the payment which would fall due on January 10th, 1909, but such instructions you are to disregard and return to me.

Mr. Geo. H. Whitelaw has hereon consented to the terms, stipulations, payments and conditions hereinabove set forth.

Very respectfully,

(Sgd.) FRED BEAUDRY.

I, Geo. H. Whitelaw, being the same Geo. H. Whitelaw referred to in the agreement, dated July 21st, 1906, and the Deed dated October 31st, 1906, between Fred Beaudry and Geo. H. Whitelaw, and on deposit in escrow with the Pioneer Trust Company of Kansas City, Mo., subject to certain escrow instructions, do [78] hereby acknowledge and declare that the above and foregoing letter to Pioneer Trust Company of Kansas City, Mo., is a true and correct statement of the terms and conditions relating to the payment of the sum of Sixty-two Thousand and Five Hundred Dollars (\$62,500), which was due Fred Beaudry on January 10th, 1909, and I hereby agree and consent to the terms and stipulations contained in this letter, and agree to be bound thereby.

Dated San Francisco, Cal., Jan. 15th, 1909.

(Signed) GEO. H. WHITELOW. [79]

EXHIBIT "E."

THIS AGREEMENT, made and entered into this

eleventh day of December, in the year of our Lord, One Thousand Nine Hundred and Nine,

Between FRED BEAUDRY, of the City and County of San Francisco, State of California, the party of the first part, and—

GEORGE H. WHITELOW, of Delta, State of California, the party of the second part,

WITNESSETH: THAT WHEREAS, on the twenty-first day of July, A. D. 1906, the said Fred Beaudry did enter into a written contract with the said George H. Whitelaw for the sale of certain Gravel Mines, together with the timber and improvements thereon, and fixtures and personal property, including pipes, flumes, ditches, saw-mill, block-mill, giants, tools, buildings, furniture and water-rights, all located in Township Thirty-five (35) North of Range Eight (8) West, M. D. B. & M., in the County of Trinity, State of California;

AND WHEREAS, said Contract or Agreement particularly provided for the sale of said properties at the price or sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) in United States Gold Coin;

AND WHEREAS, from time to time extensions in the time for the payment of purchase price have been made;

AND WHEREAS, the sum of One Hundred and Twenty-five Thousand (\$125,000.00) Dollars in United States Gold Coin has been paid for and on account of purchase price of the above-named and described property;

AND WHEREAS, under the terms of the said

agreement of July 21st, 1906, and under the terms of the several extensions of time for the payment of purchase price, there becomes due on the Tenth day of January, 1910, the sum of Sixty-two Thousand and Five Hundred Dollars (\$62,500.00), in United States Gold Coin, together with interest on the sum of One Hundred and Twenty-five Thousand Dollars (\$125,000.00) from the tenth day of January, 1909, at the rate of five per cent. (5%) per annum, making a total payment due on the tenth day of January, 1910, of the sum of Sixty-eight Thousand Seven Hundred and Fifty Dollars (\$68,750.00), in United States Gold Coin; [80]

AND WHEREAS, the said party of the second part believes that he will be unable to make the said payment on the tenth day of January, 1910, in the sum of sixty-eight thousand, seven hundred and fifty (\$68,750.00) dollars;

AND WHEREAS, the said party of the second part considers that he will be unable to make the payment due on the tenth day of January, 1911, in the sum of sixty-two thousand, five hundred dollars (\$62,500.00);

AND WHEREAS, there still remains due, owing and unpaid from the party of the second part to the party of the first part, upon the purchase price of said properties, the sum of One Hundred and Twenty-five Thousand Dollars (\$125,000.00), in Gold Coin of the United States, together with interest on said sum at the rate of five per cent. (5%) per annum from the tenth day of January, 1909;

AND WHEREAS, the said party of the second part desires to have the said payments of purchase

price and the time for the making thereof changed and modified, and the said party of the first part is willing to concede and grant to the party of the second part an extension of time within which to make said payments and to alter the terms of payment according to the desires of the party of the second part;

NOW, THEREFORE, the said party of the first part in consideration of the premises, and in consideration of the sum of one (\$1.00) Dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, does hereby extend, alter and change the terms and conditions of said Contract and Agreement of July 21st, 1906, in the following respects, ways and forms, to wit:

The installment of purchase price and interest, amounting to the sum of Sixty-eight Thousand, Seven Hundred and Fifty Dollars (\$68,750.00) which is due on the tenth day of January, 1910, under the terms and conditions of the said contract, dated July 21st, 1906, is to be modified and the payment thereof to be made as follows:

The sum of Two Thousand Dollars (\$2,000.00) on the twentieth day of January, 1910;

The sum of Four Thousand Two Hundred and Fifty Dollars (\$4,250.00) on the twentieth day of February, 1910;

The sum of Ten Thousand Dollars (\$10,000.00) on the tenth day of April, 1910, together with the further and additional sum of Two Thousand Two Hundred and Ninety-five [81] Dollars (\$2,295.00) which latter sum shall be paid on said tenth day of

April, 1910 to Thomas B. Dozier, Esq., of 1103 First National Bank Bldg., San Francisco, California, for and as attorney fee and compensation in connection with this matter; this in lieu of any claim which the party of the first part now has against the party of the second party for disbursements actually made and paid out by the said party of the first part up to the date hereof, and not repaid by the party of the second part, in connection with the Contests of Mining Claims and Locations (the subject of the Contract of July 21st, 1906) in the United States Land Office, at Redding, California;

The sum of Ten Thousand Dollars (\$10,000.00) on the tenth day of July, 1910;

The sum of Ten Thousand Dollars (\$10,000.00) on the tenth day of October, 1910;

The sum of Ten Thousand Dollars (\$10,000.00) on the tenth day of November, 1910;

The sum of Twelve Thousand, Five Hundred Dollars (\$12,500.00) on the tenth day of December, 1910; and

The sum of Ten Thousand Dollars (\$10,000.00) on the first day of April, 1911, together with interest thereon at the rate of eight per cent. (8%) per annum, from January 10th, 1910 until paid.

If the payments due on January 20th, 1910, February 20th, 1910, April 10th, 1910, July 10th, 1910, October 10th, 1910, November 10th, 1910 and December 10th, 1910, and the payment due to Thomas B. Dozier on April 10th, 1910, shall actually be made on or before the several dates specified for the making thereof; then the same shall be free and clear

of all interest, otherwise, the said payments and each of them shall bear interest at the rate of five per cent (5%) per annum, from the tenth day of January 1910, until paid.

The installment of purchase price which is due on the tenth day of January, 1911, under the terms and provisions of the contract of July 21st, 1906, is to be paid as follows:

The sum of Ten Thousand Dollars (\$10,000.00) on the tenth day of January, 1911, together with interest thereon at the rate of five per cent. (5%) per annum, from the tenth day of January, 1910, until paid; and the sum of Fifty-two Thousand and Five Hundred Dollars (\$52,500.00) on the tenth [82] day of April, 1911, together with interest on said sum at the rate of five per cent. (5%) per annum, from the tenth day of January, 1910, until the tenth day of January, 1911, at which last mentioned time the said interest on said sum shall be paid; and thereafter and from the said tenth day of January, 1911, until the tenth day of April, 1911, the said sum of Fifty-two Thousand and Five Hundred Dollars (\$52,500.00) shall bear interest at the rate of eight per cent. (8%) per annum, payable on the tenth day of April, 1911.

IT IS FURTHER PROVIDED that the party of the second part shall pay to the party of the first part the further sum of Seven Hundred Dollars (\$700.00) on the tenth day of October, 1910, for money advanced by the party of the first part in the matter of securing of Patents in the Long Gulch

Placer Mining Claim and the Mule Creek Ridge Placer Mining Claim.

IT IS FURTHER STIPULATED AND AGREED that the provisions of the contract of July 21st, 1906, for the removing of the deed of said property from escrow, after the payment of one-half of the purchase price, and the giving of notes secured by mortgage upon the property, is hereby canceled, eliminated, annulled and set aside; and the said party of the second part hereby waives any and all right to remove said deed of escrow until the full and entire purchase price has been paid and all other moneys due from the party of the second part to the party of the first part in connection with this transaction have been fully and completely paid.

IT IS FURTHER STIPULATED AND AGREED, that the party of the second part is to pay all expenses, fees, charges and costs in connection with the Contests in the United States Land Office at Redding, California, and upon any appeal of the same to the Commissioner of the General Land Office, or the Secretary of the Interior, in the Matter of the Application for Patent in the Greenhorn Placer Mining Claims; said Contests being now pending in the United States Land Office, at Redding, California;

AND IT IS FURTHER STIPULATED that the party of the second part is to do and perform on each, every and all of the unpatented placer mining claims, mentioned and particularly set forth in the Contract of Agreement of July 21st, 1906, the annual assessment work, labor and improvements, re-

quired by law, and the rules and regulations of the Department of [83] the Interior, to be done and performed upon placer mining claims in order to hold and maintain the possessory right and title thereto; said labor and improvements to be furnished, done and performed, at the sole cost, charge and expense of the party of the second part, and without any charge, cost or expense to the party of the first part.

IT IS FURTHER STIPULATED AND AGREED that time be and the same is hereby declared to be of the essence and material substance of this Agreement, and of the Agreement of July 21st, 1906, and every part and portion thereof, and is to apply to and bind each and both of the parties hereto, and the heirs, executors, administrators, successors and assigns of the respective parties; and in case of a default in the payment of any of the amounts herein specified to be paid, then the said party of the second part is to forfeit all rights hereunder, both in law and in equity, and the moneys paid for and on account of purchase price and otherwise are to be retained by the party of the first part and are to be considered for and as rental for the use and occupation of said lands and premises.

The Agreement of July 21st, 1906, except as herein changed and expressly modified is to remain in full force, virtue and effect.

A copy of this agreement is to be placed with The Pioneer Trust Company of Kansas City, Missouri, the present escrow dispensary in this matter, and the said Pioneer Trust Company of Kansas City, Missouri, is hereby authorized and empowered to

abide by the terms, stipulations and conditions of this agreement, taken in connection with the instructions heretofore given it in the above matter.

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and seal the day and year in this instrument first above written.

FRED BEAUDRY. (Seal)

I, George H. Whitelaw, of Delta, Colorado, a party to the agreement of July 21st, 1906, mentioned and referred to herein, do hereby expressly agree and consent to the modifications of the terms and conditions hereinabove set forth and declared of the said agreement of July 21st, 1906, and agree to abide by the terms, stipulations and conditions herein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this eleventh day of December, in the year of our Lord, One Thousand Nine Hundred and Nine.

GEORGE H. WHITELOW. (Seal) '[84]

EXHIBIT "F."

Dec. 11, 1911.

Mr. George H. Whitelaw,
514 Higgins Bldg.,
Los Angeles, Cal.

Dear Mr. Whitelaw:

This is intended as a formal notice to you that I do not intend to allow the contract between you and myself, concerning Minersville mining property in Trinity County, California, to remain unsettled and unfulfilled upon your part after the first day of January, 1912. I have repeatedly given you exten-

sions of time within which to make payments for and on accounts of purchase price of the properties, and the matter has now run into years. I must now demand that the matter be closed and that I be paid as per the terms and conditions of the existing contract and agreement. The exact amount of money which will be due to me on the first day of Jan., 1912. under the terms of the contract and agreements, is \$81,969.95, plus the sum of \$237.10 paid out by me for taxes of this present year. This includes the entire amount of principal and interest due and the amount of taxes disbursed, and makes a total of \$82,207.05. I need the money and desire to have it paid, but will make this last and final proposition, to wit:

If the sum of \$32,207.05 is paid to me, or to my account at the Pioneer Trust Company in Kansas City, Missouri, on or before the first day of January, 1912, without rebate or discount in cash, Gold Coin of the United States, I will permit the amount or balance of \$50,000.00 to remain unpaid for the Period of one year from the first day of January, 1912; the said amount to draw interest at the rate of 8%, eight per cent, per annum, and interest to be paid semi-annually.

If this proposition is not accepted and the sum of \$32,207.05 paid on or before the first day of January, 1912, or the full amount which is due paid on or before said date, then I will declare the forfeiture of the contract and agreement, will grant no further extension of time and will recall the papers from the Pioneer Trust Company at Kansas City, Missouri.

I will not permit the matter to remain in the uncertain and unsatisfactory state which it has been in for some time past.

Respectfully,

(Signed) FRED BEAUDRY. [85]

**Exhibit "B" [to First Amended Bill of Complaint—
Affidavit of Charles W. Willard.]**

IN WITNESS WHEREOF, the said The Trinity Gold Dredging & Hydraulic Company has caused this claim to be executed by its attorneys this 28th day of January, 1913.

THE TRINITY GOLD DREDGING &
HYDRAULIC COMPANY,

By McCUTCHEN, OLNEY & WILLARD,

Its Attorneys.

State of California,

City and County of San Francisco,—ss.

Charles W. Willard, being first duly sworn, deposes and says:

That he is a member of the firm of McCutchen, Olney & Willard, attorneys at law; that the said firm and affiant are attorneys for The Trinity Gold Dredging & Hydraulic Company, the corporation named as claimant in the foregoing claim; that all the members of the said firm and affiant have their offices in the City and County of San Francisco, State of California; that the said claimant, The Trinity Gold Dredging & Hydraulic Company, is a corporation organized under the laws of the State (formerly Territory) of Arizona, with its principal office at Tucson, in said State, and having an office for the transaction of its corporate business in Minne-

apolis, in the State of Minnesota; that all the officers of said corporation reside out of and are absent from the [86] said State of California, and the City and County of San Francisco, in said State; that affiant makes this affidavit on behalf of the said claimant, and this affidavit is not made by the said claimant or by any officer of said claimant, for the reason, as aforesaid, that the said claimant is a corporation, and that the said corporation and all the officers thereof are absent from the City and County and State where affiant and the other attorneys for the said claimant have their offices; that affiant makes this affidavit on behalf of said claimant for the reasons hereinbefore set forth, and for the further reason that the facts constituting the said claim are within the knowledge of affiant; that affiant has read the foregoing statement of claim and knows the contents thereof, and that the same is true; that the amount of said claim, as set forth in said statement, to wit, the sum of \$304,169, with interest thereon at the rate of 7% per annum from the 31st day of December, 1912, is justly due; that no payments have been made on the amount of said claim which are not credited and that there are no offsets to the same to the knowledge of affiant.

Affiant further states that Exhibits "A," "B," "C," "D," "E," and "F," attached to the said claim, are copies of the instruments upon which the said claim is founded, and that the original instruments, of which the said exhibits are copies, cannot now be found among the papers of the said claimant. The Trinity Gold Dredging & Hydraulic Company,

nor anywhere, and that the same, [87] and each of them, are either lost or destroyed.

CHARLES W. WILLARD.

Subscribed and sworn to before me this 28th day of January, 1913.

[Seal]

FRANK L. OWEN,
Notary Public in and for the City and County of
San Francisco, State of California.

Service of the within first amended bill of complaint and receipt of a copy is hereby admitted this 13th day of January, 1914.

THOMAS B. DOZIER,
Solicitors for Defendants, Angele Beaudry, Executrix, etc., and Angele Beaudry.

[Endorsed]: Filed Jan. 13, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [88]

In the District Court of the United States, Northern District of California, Second Division.

No. 20.

THE TRINITY GOLD DREDGING AND HYDRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last Will and Testament of FREDERIC BEAUDRY, Deceased, ANGELE BEAUDRY, Individually, and GEORGE H. WHITELAW, Defendants.

Motion to Dismiss First Amended Bill of Complaint.

To the Honorable Judges of the United States District Court, in and for the Northern District of California:

The defendants, Angele Beaudry as executrix of the Last Will and Testament of Frederic Beaudry, deceased; and Angele Beaudry, individually; hereby appear in response to complainant's First Amended Bill of Complaint, filed and served in the above-entitled action, and move to dismiss the said First Amended Bill of Complaint, filed and presented herein by the Complainant, The Trinity Gold Dredging and Hydraulic Company, a corporation; the grounds upon which said motion is based and is to be made are as follows:

I.

That the First Amended Bill of Complaint does not state facts sufficient to entitle the Complainant to the equitable relief prayed for by it; and does not state facts [89] sufficient to constitute a valid cause of action in equity; and neither does said First Amended Bill of Complaint state sufficient facts to entitle it to any equitable relief whatever.

II.

That it affirmatively appears from the facts set forth and stated in the First Amended Bill of Complaint that the complainant is not entitled to the equitable relief prayed for by it and is not entitled to any equitable relief whatever.

III.

That it affirmatively appears upon the face of the

First Amended Bill of Complaint and from the facts therein stated, that complainant is not entitled to rescind the contract therein referred to, because it has not used reasonable, or any, diligence to rescind promptly upon discovering the alleged facts which it is claimed entitle it to rescind; it not being claimed or alleged that complainant was not at all times mentioned in the said First Amended Bill of Complaint, free from duress, menace, undue influence and disability; nor that it was not aware of its right to rescind before a long time prior to any attempt or effect to do so.

IV.

That it affirmatively appears from the face of the First Amended Bill of Complaint, and from the facts therein stated, that the complainant is not entitled to rescind the contract therein referred to because it has [90] not offered to restore the property received by it, under said contract, and cannot restore the same; and these defendants cannot be restored to substantially the same position that they would have been in had the contract not been made.

V.

That it affirmatively appears from the face of said First Amended Bill of Complaint, and from the facts therein stated, that the complainant cannot restore the defendants to the condition in which they would have been in but for the contract; and it does affirmatively appear from the face of the said First Amended Bill of Complaint, and from the facts therein stated, that the complainants cannot restore

the defendants, or either of them, to the position they would have occupied but for the contract.

VI.

That it affirmatively appears that the defendant, Angele Beaudry, in her individual capacity, is neither party nor privy to any of the transactions mentioned in the said First Amended Bill of Complaint; it affirmatively appearing that the property has not yet been distributed to her as an individual, but is yet in the hands of the executrix, and under the jurisdiction of the Superior Court of the State of California, in and for the City and County of San Francisco, and if there is any action at all, it is to enforce rights or liens against the property of Frederic Beaudry, deceased, and against his executrix.

[91]

WHEREFORE, these defendants pray the Honorable Court hearing this motion that, by its order, judgment and decree, it dismiss and discharge the complainant's First Amended Bill of Complaint, and send these defendants hence with their costs and disbursements.

Dated: January 16th, 1914.

THOMAS B. DOZIER,

Solicitor for the Defendants, Angele Beaudry, as
Executrix of the Last Will and Testament of
Frederic Beaudry, Deceased; and Angele Beau-
dry, Individually.

Service of the within Motion, etc., admitted by
receipt of copy this 16th day of January, 1914.

McCUTCHEN, OLNEY & WILLARD,

Solicitors for Complainant.

[Endorsed]: Filed Jan. 16, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [92]

At a stated term, to wit, the March term, A. D. 1914,
of the District Court of the United States of
America, in and for the Northern District of
California, Second Division, held at the court-
room in the City and County of San Francisco,
on Monday, the 8th day of June, in the year of
our Lord one thousand nine hundred and four-
teen. Present: The Honorable WILLIAM C.
VAN FLEET, District Judge.

No. 20—EQUITY.

TRINITY GOLD DREDGING & HYDRAULIC
CO.

vs.

ANGELE BEAUDRY, etc., et al.

**Order Granting Motion to Dismiss Amended Bill of
Complaint.**

Defendants' motion to dismiss the amended bill
of complaint, heretofore heard and submitted, being
now fully considered and the Court having rendered
its oral opinion thereon, it was ordered that said
motion to dismiss the amended bill be and the same is
hereby granted. [93]

*In the United States District Court, in and for the
Northern District of California, Second Division.*

No. 20.

THE TRINITY GOLD DREDGING AND HY-
DRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC BEAU-
DRY, Deceased, ANGELE BEAUDRY, In-
dividually, and GEORGE H. WHITELAW,
Defendants.

Decree.

In the above-entitled action, the motion of the defendants, Angele Beaudry, as Executrix of the last Will and Testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss the First Amended Bill of Complaint of the complainant in said action, having, by an Order duly and regularly made and entered on Monday, the eighth day of June, A. D. 1914, been granted herein, and said First Amended Bill of Complaint dismissed; and no application, or notice of motion, for leave to file a Second Amended Bill of Complaint herein, having been made by said complainant within the time allowed by law and the rules of this Court, and more than ten days having elapsed since the entry of said Order Dismissing the First Amended Bill of Complaint and since service of written notice of the entry of said Order,—

Now, on motion of Thomas B. Dozier, Esq., solicitor for the defendants, Angele Beaudry, as Executrix of the Last Will and Testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, [94] the Court being fully advised in the premises:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the motion to dismiss the First Amended Bill of Complaint be, and is hereby granted; that the said First Amended Bill of Complaint be, and is hereby dismissed; that the said action be, and is hereby dismissed, that the complainant take nothing thereby, and that the defendants, Angele Beaudry, as Executrix of the Last Will and Testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, have judgment against the said complainant, The Trinity Gold Dredging and Hydraulic Company, a corporation, for their costs incurred herein, amounting to the sum of ——— Dollars.

Done in open court, this 11th day of July, A. D. 1914.

WM. C. VAN FLEET,
District Judge.

[Endorsed]: Filed and entered July 11, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [95]

*In the United States District Court, in and for the
Northern District of California.*

No. 20.

THE TRINITY GOLD DREDGING AND HY-
DRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC BEAU-
DRY, Deceased, ANGELE BEAUDRY, In-
dividually, and GEORGE H. WHITELAW,
Defendants.

**Proposed Bill of Exceptions of Complainant from
Order Granting Defendants' Motion to Dismiss
First Amended Bill of Complaint.**

BE IT REMEMBERED that within the time
allowed by law and the order of the above-entitled
court, complainant above named filed in said court,
in the above-entitled cause, its first amended bill of
complaint, and served the said first amended com-
plaint upon defendants in the manner required by
law; and, to wit, on the 16th day of January, 1914,
said defendants served upon complainant, and filed
in the above-entitled court, in the above-entitled
action their motion to dismiss. That the said first
amended complaint was in words and figures follow-
ing, to wit:

(Here follows a copy of the first amended bill of
complaint, with all exhibits annexed thereto, which
said first amended bill of complaint and exhibits are

already contained in this transcript, and are for that reason and to avoid useless repetition omitted at this point.) [96]

BE IT FURTHER REMEMBERED that, thereafter, and within the time allowed by law, and, to wit, on the 16th day of January, 1914, the said defendants served upon complainant, and filed in the above-entitled court, in the above-entitled action, their motion to dismiss said first amended bill of complaint. That said motion to dismiss was in the words and figures following, to wit:

(Here follows a copy of the motion to dismiss the first amended bill of complaint, which said motion to dismiss is already contained in this transcript, and is for that reason and to avoid useless repetition omitted at this point.) [97]

BE IT FURTHER REMEMBERED that, thereafter, and, to wit, on the 26th day of January, 1914, at a stated term of the District Court of the United States for the Northern District of California, Second Division, the said motion of said defendants to dismiss said first amended bill of complaint came on regularly for hearing before Honorable William C. Van Fleet, District Judge, presiding; said defendants being represented by Thomas B. Dozier, Esquire, and the complainants being represented by Messrs. McCutchen, Olney & Willard. Thereupon the motion was argued by counsel, and was thereafter submitted to said court for determination. Thereafter, and, to wit, on the 8th day of June, 1914, the said Court having fully considered said motion, did grant the same, and, on said last mentioned date

the following order was given, made and entered by said Court:

(Here follows a copy of the order granting motion to dismiss the amended bill, which said copy of order is already contained in this transcript, and is for that reason and to avoid useless repetition omitted at this point.) [98]

That the following is a copy of the oral opinion delivered by the Judge of said Court upon the decision of said motion to dismiss: [99]

In the District Court of the United States, Northern District of California, Second Division.

Hon. WM. C. VAN FLEET, Judge.

No. 20—EQUITY.

TRINITY GOLD DREDGING AND HY-
DRAULIC COMPANY, a Corporation,
Plaintiff,

vs.

ANGELE BEAUDRY, etc., et al.,
Defendants.

Oral Opinion on Motion to Dismiss Amended Bill of Complaint.

McCUTCHEN, OLNEY & WILLARD, for
Plaintiff.

THOMAS B. DOZIER, for Defendants.

MONDAY, JUNE 8th, 1914.

The COURT (Orally): In the case of Trinity Gold Dredging and Hydraulic Company, a corporation, vs. Angele Beaudry, a bill filed here for rescission of a

contract for the sale of certain mining property, the original bill was dismissed for want of equity and because of laches. Plaintiff sought and obtained leave to file an amended bill, which is again met by a motion to dismiss on the same grounds. After a very careful examination I am satisfied that the amended bill is not improved in any material respect over the original. The contract is in the form of an option [100] giving a right to purchase within a given time, with the right to the immediate possession of the property for the purposes of exploration and exploitation. The option was accepted and all but the last payment has been made. The property is described as consisting of a number of mining claims embracing a considerable acreage of placer ground, something in excess of 1200 acres being patented, and thus described in the contract; some eight claims as held under Receiver's Certificate, and five, I think, or seven, are described as merely possessory claims. Now, this property is thus specifically described in the contract, with the title then held by the party giving the option. He stipulates, in the event the option is availed of, upon demand, to make "a good and sufficient deed of all of the properties aforesaid, free and clear of encumbrances." The bill proceeds upon the theory that the plaintiff is entitled to a rescission for the failure of the defendant to make title, the failure alleged relating to certain of the unpatented claims. As indicated at the argument, I think that the bill proceeds upon a fundamental misconstruction of the effect of this contract. It is perfectly true, as plaintiff insists, that under an ordinary

contract for the sale of real estate a covenant to give a good deed implies, in the absence of any limitation, the requirement of a conveyance of a perfect title; but that rule cannot in its nature have application to an instance such as this, where the contract specifically describes the character of right or title held at the date of the contract, where there is no provision requiring the taking of any further steps by the grantor to [101] acquire a different and further title, and where, as here, the situation is such that under the very terms of the contract the grantor is depriving himself of the ability to perfect the title to the unpatented claims. Under such circumstances it seems to me that the contract must be construed as one contemplating a transfer only of the title as it then stood, the interest or right described as existing in the grantor, and not one to be interpreted as an ordinary contract for the conveyance of real estate. The property is nowhere described as real estate. It is described, as I have said, as certain mining property, and giving a specific designation of the particular claims and how they are held. The fact, if it were material to regard it, that subsequent to the making of the original contract, when the Government was giving the plaintiff trouble over some of the claims, the parties entered into a supplemental contract whereby, in consideration of the grantor taking certain steps regarded as necessary to meet the objections of the Government, it was provided that the grantee should pay all the expenses of the proceedings, seems to me was in effect a construction of the contract by the parties themselves in harmony with

the view I have expressed. The right to rescission depending upon this feature of the contract, the bill is, I am satisfied, based upon a misapprehension of its effect, and fails to state a cause for equitable relief.

As indicated, I am also of the opinion that the bill has not avoided the objection of laches. It is perhaps unnecessary to definitely pass upon that question. [102] Laches does not necessarily depend upon any specific lapse of time. It is a neglect which under the circumstances of the particular case is such as makes it inequitable to permit one to prosecute a right which under other circumstances he might be justly entitled to enforce. Looking at all the circumstances, it seems to me to be apparent that after plaintiff had become aware of all the grounds for rescission which it sets up in the bill, it delayed for an unreasonable period before asserting them, and although that period was comparatively brief, I am nevertheless of the opinion that it constituted culpable laches.

The motion to dismiss the amended bill will be granted. [103]

That, thereafter, and, to wit, on the 17th day of June, 1914, the Judge of said court duly gave and made an order extending the time of complainant twenty (20) days from the date of said order to prepare, serve and file, and present for settlement its proposed bill of exceptions on the order theretofore given and made by the Court granting the motion of defendants to dismiss the first amended bill of complaint.

The foregoing constitute all of the proceedings had

upon the hearing and determination of said motion to dismiss said first amended bill of *complainant*.

And now within the time required by law and the rules of this court, the said complainant proposes the foregoing as and for its bill of exceptions, and prays that the same may be settled and allowed as correct.

Dated: San Francisco, California, June 30th, 1914.

McCUTCHEN, OLNEY & WILLARD,

Attorneys for Complainant. [104]

IT IS HEREBY STIPULATED that the foregoing bill of exceptions is correct, and that it contains all of the proceedings had upon the hearing and determination of the motion of the defendants herein, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss complainant's first amended bill of complaint; and it is stipulated that the said proposed bill of exceptions may be allowed and approved.

Dated, July 10th, 1914.

THOMAS B. DOZIER,

Attorney for Defendants Angele Beaudry, as Executrix of the Last Will and Testament of Frederic Beaudry, Deceased, and Angele Beaudry, Individually.

McCUTCHEN, OLNEY & WILLARD,

Attorneys for Complainant.

The foregoing bill of exceptions being now presented in due time and found to be correct, I do hereby certify that the said bill is a true bill of exceptions, and that it contains all of the proceedings upon the hearing and determination of the motion of defend-

ants herein, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss complainant's first amended bill of complaint, and the said bill of exceptions is hereby settled, allowed and approved.

Dated, July 11th, 1914.

WM. C. VAN FLEET,
United States District Judge for the Northern District of California, Second Division.

[Endorsed]: Filed Jul. 11, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [105]

*In the United States District Court, in and for the
Northern District of California.*

No. 20.

THE TRINITY GOLD DREDGING & HYDRAU-
LIC COMPANY, a Corporation,

Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC BEAU-
DRY, Deceased, ANGELE BEAUDRY, Indi-
vidually, and GEORGE H. WHITELOW,
Defendants.

Stipulation Consenting to the Use of Bill of Exceptions on Order Granting Defendants' Motion to Dismiss First Amended Bill of Complaint as and for a Bill of Exceptions Upon Appeal from Judgment.

WHEREAS, on the 8th day of June, 1914, the

above-entitled court in the above-entitled matter gave and made and entered an order granting the motion of defendants herein, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss complainant's first amended bill of complaint; and,

WHEREAS, thereafter complainant duly presented, in the manner and within the time required by law and the rules of this court, a bill of exceptions from said order granting said motion, as aforesaid, and said bill of exceptions was, on the 11th day of July, 1914, duly allowed, approved and settled in the manner required by law and the rules of this court, and filed in the office of the clerk of said court in the above-entitled [106] cause; and,

WHEREAS, thereafter, and, to wit, on the 11th day of July, 1914, the above-entitled court gave and made and entered its judgment in favor of said defendants, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, pursuant to said order granting said defendants' motion to dismiss said first amended bill, as aforesaid, and said complainant is about to appeal to the Circuit Court of Appeals for the Ninth Circuit from said last mentioned judgment:

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the said bill of exceptions of complainant from said order granting said motion to dismiss said first amended bill of com-

plaint, heretofore settled, allowed, approved and filed, as aforesaid, may be used by said complainant upon its said proposed appeal from the judgment in this cause; and it is further stipulated that said last mentioned bill of exceptions shall, in all respects, be deemed to take the place of a separate bill of exceptions from the said judgment; and said defendants, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, hereby waive all objection to the use of said bill of exceptions from said order granting said motion to dismiss as and for a bill of exceptions upon appeal from the said judgment.

Dated: July 11th, 1914.

THOMAS B. DOZIER,
Attorney for Defendants, Angele Beaudry, as Execu-
trix of the Last Will and Testament of Frederic
Beaudry, Deceased, and Angele Beaudry, Indi-
vidually. [107]

GOOD CAUSE appearing therefor, and upon the foregoing stipulation—

IT IS HEREBY ORDERED that the bill of exceptions of complainant from the order heretofore given and made by this Court granting the motion of the defendants herein, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss complainant's first amended bill of complaint, heretofore, settled, allowed, approved and filed, may be used by said complainant upon its appeal from the judgment heretofore given and made by this Court in this cause; and it is further ordered

that said last mentioned bill of exceptions shall in all respects be deemed to take the place of a separate bill of exceptions from said judgment.

Dated, July 11th, 1914.

WM. C. VAN FLEET,
United States District Judge for the Northern District of California, Second Division.

[Endorsed]: Filed Jul. 11, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [108]

In the United States District Court, in and for the Northern District of California, Second Division.

No. 20.

THE TRINITY GOLD DREDGING AND HYDRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last Will and Testament of FREDERIC BEAUDRY, Deceased, ANGELE BEAUDRY, Individually, and GEORGE H. WHITELOW, Defendants.

Summons in Severance.

To George H. Whitelaw, Esq.

YOU ARE HEREBY INVITED to join with the undersigned to prosecute an appeal in the above-entitled cause in the United States District Court, Northern District of California, to the United States Circuit Court of Appeals, for the Ninth Circuit, to

reverse the judgment and decree in the above-entitled cause, given, made and entered against you and the undersigned on the 11th day of July, 1914, wherein and whereby it was ordered and decreed that the motion of the defendants above named, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss the first amended bill of complaint of complainant above named be, and the same thereby was granted, and that the said first [109] amended bill of complaint be, and the same thereby was, dismissed, and that the said action be, and the same thereby was, dismissed, and that the complainant herein take nothing thereby, and that the said defendants, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, have judgment against the said complainant for their costs of suit; or you will be deemed to have acquiesced in the said judgment and decree, and the undersigned shall prosecute said appeal without joining you as a party.

Dated: July 22, 1914.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corpora-
tion,

Complainant,
By McCUTCHEN, OLNEY & WILLARD,
Its Solicitors.

Service of the within Summons in Severance and receipt of a copy is hereby admitted this 30th day of July, 1914.

GEORGE H. WHITELOW,

By D. G. WHITELOW,

His Attorney.

GEORGE H. WHITELOW.

[Endorsed]: Filed Sep. 4, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [110]

In the United States District Court, in and for the Northern District of California, Second Division.

No. 20.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC
BEAUDRY, Deceased, ANGELE BEAU-
DRY, Individually, and GEORGE H.
WHITELOW,

Defendants.

Refusal of George H. Whitelaw to Join in Appeal.

Now, comes George H. Whitelaw, one of the defendants above named, and refuses to join with The Trinity Gold Dredging and Hydraulic Company, a corporation, in prosecuting an appeal from the United States District Court, for the Northern District of California, to the United States Circuit

Court of Appeals, for the Ninth Circuit, as invited in a summons in severance heretofore and, to wit, on the 30th day of July, 1914, served on him, to reverse the judgment and decree in the above-entitled cause given, made and entered against the said The Trinity Gold Dredging and Hydraulic Company, a corporation, and himself, on the 11th day of July, 1914.

GEORGE H. WHITELOW,

D. G. WHITELOW,

His Attorney.

[Endorsed]: Filed Sep. 4, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [111]

In the United States District Court, in and for the Northern District of California, Second Division.

No. 20.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC
BEAUDRY, Deceased, ANGELE BEAU-
DRY, Individually, and GEORGE H.
WHITELOW,

Defendants.

Petition for Appeal.

The Trinity Gold Dredging and Hydraulic Company, a corporation, complainant above named, conceiving itself aggrieved by the decree and order

given, made and entered in the above-entitled cause, in the above-entitled court, on the 11th day of July, 1914, wherein and whereby it was ordered and decreed that the motion of the defendants herein, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss the complainant's first amended bill of complaint herein, be, and the same was thereby, granted, and that the said first amended bill of complaint be, and the same was thereby, dismissed, and that the [112] said action be, and the same was thereby, dismissed, and that the said complainant take nothing thereby, and that said defendants, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, have judgment against said complainant for their costs of suit herein incurred, amounting to the sum of \$23.60, does hereby appeal from said order and decree of said Court to the United States Circuit Court of Appeals for the Ninth Circuit, and does hereby pray that this petition for said appeal and for leave to prosecute said appeal, severed from all interest of the defendant herein, George H. Whitelaw, may be allowed, and that a transcript of the record and proceedings and papers upon which said final order and decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of filing this petition for appeal, the said appellant files an assignment of errors, setting up separately and particularly each error asserted and intended to be urged in the said United States Circuit

Court of Appeals for the Ninth Circuit.

And said petitioner further prays that an order be made fixing the amount of the bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

McCUTCHEN, OLNEY & WILLARD,
Solicitors for Said Complainant.

[Endorsed]: Filed Sep. 4, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [113]

*In the United States District Court, in and for the
Northern District of California, Second Division.*

No. 20.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC
BEAUDRY, Deceased, ANGELE BEAU-
DRY, Individually, and GEORGE H.
WHITELAW,
Defendants.

Assignment of Errors.

Now, comes the Trinity Gold Dredging and Hydraulic Company, a corporation, complainant herein, by its undersigned solicitors, and says that in the record, proceedings, and decree given, made and entered in this cause on the 11th day of July, 1914, there is a manifest error, and that said complainant has been denied its just rights by the said

order and decree entered by said District Court, and the said complainant hereby assigns and sets out separately and particularly the following errors, viz.:

I.

Said District Court erred in making its order on the 8th day of June, 1914, granting the motion of the said defendants, [114] Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss complainant's first amended bill of complaint herein.

II.

Said District Court erred in giving and making its order on the 8th day of June, 1914, granting the motion of the defendant herein, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, to dismiss complainant's first amended bill of complaint herein.

III.

Said District Court erred in giving and making its order on the 8th day of June, 1914, granting the motion of the defendant herein, Angele Beaudry, individually, to dismiss complainant's first amended bill of complaint herein.

IV.

Said District Court erred in giving, making and entering its judgment, order and decree on the 11th day of July, 1914, that the motion of the said defendants, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss complain-

ant's first amended bill of complaint, be, and the same was thereby, granted, and that the said first amended bill of complaint be, and the same was thereby, dismissed, and that the said action be, and the same was thereby, dismissed, and that the complainant take nothing thereby, and that the said defendants, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, have judgment against the said complainant for their costs herein incurred, amounting to the sum of \$23.60. [115]

V.

Said District Court erred in giving, making and entering its judgment on the 11th day of July, 1914, in favor of said defendants, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, or in favor of either of said defendants.

VI.

Said District Court erred in dismissing said action and in holding and deciding that the agreement of sale which complainant sought to rescind in said first amended bill of complaint did not call for a valid title to the mining claims therein referred to, but that said agreement of sale called only for a conveyance to said complainant of whatever right, title and interest was owned by Frederic Beaudry, the testator of the defendant, Angele Beaudry.

VII.

Said District Court erred in granting said motion to dismiss and in entering judgment in favor of said defendants, Angele Beaudry, as executrix of

the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, and in holding and deciding that complainant was not entitled to rescind the agreement of sale referred to and set out in the said first amended bill of complaint.

VIII.

Said District Court erred in dismissing said action and in holding and deciding that complainant's right to rescind the agreement of sale referred to and set out in said first amended bill of complaint was barred by laches. [116]

IX.

Said District Court erred in refusing to hold that complainant was entitled to the relief prayed for in said first amended bill of complaint upon the facts set forth therein.

WHEREFORE, said complainant, The Trinity Gold Dredging and Hydraulic Company, a corporation, prays that the said decree may be reversed, and for such further relief as may be meet in the premises.

Dated, San Francisco, California, September 4th, 1914.

McCUTCHEN, OLNEY & WILLARD,
Solicitors for Complainant.

[Endorsed]: Filed Sep. 4, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [117]

*In the United States District Court, in and for the
Northern District of California, Second Divi-
sion.*

No. 20.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC
BEAUDRY, Deceased, ANGELE BEAU-
DRY, Individually, and GEORGE H.
WHITELAW,

Defendants.

Order Allowing Appeal and Fixing Amount of Bond.

WHEREAS, in the District Court of the United States, in and for the Northern District of California, on the 11th day of July, 1914, a decree was made and entered in the above-entitled cause, wherein and whereby it was ordered, adjudged and decreed that the motion of the defendants, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss complainant's first amended bill of complaint herein, be, and the same was thereby, granted, and that the said first amended bill of complaint be, and the same was thereby, dismissed, and that the said action be, and the same was thereby, dismissed, and that the complainant take nothing thereby, and that said defendants, Angele

Beaudry, [118] as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, have judgment against said complainant for their costs of suit herein incurred; and

WHEREAS, complainant herein, The Trinity Gold Dredging and Hydraulic Company, a corporation, has on this 4th day of September, 1914, filed its petition for the allowance of an appeal from said decree (severed from all interest of George H. Whitelaw, a party to this action) to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the bond which it shall give and furnish on said appeal;

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, IT IS HEREBY ORDERED that said appeal be, and the same is hereby permitted and allowed, and that said appeal may be prosecuted by the said complainant as to its own interest and severed from all interest of said George H. Whitelaw;

IT IS FURTHER ORDERED that the said complainant shall file its undertaking and bond in form and substance conditioned, and with sureties, in accordance with the provisions of the law, and the rules and practice of this Court, in the said United States District Court, for the Northern District of California, in the sum of five hundred (500) dollars, which said bond and sureties thereon shall be approved before filing, and the said amount is hereby fixed as the amount of said bond, said bond

to be approved by a Judge of this Court.

Dated, September 4th, 1914.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Sep. 4, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [119]

*In the United States District Court, in and for the
Northern District of California, Second Division.*

No. 20.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC
BEAUDRY, Deceased, ANGELE BEAU-
DRY, Individually, and GEORGE H.
WHITELAW,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS
that the undersigned, Massachusetts Bonding and
Insurance Company, a corporation created, organ-
ized and existing under and by virtue of the laws
of the commonwealth of Massachusetts, and duly
authorized to transact business in the State of Cali-
fornia, and fully qualified before the Department of
Justice to execute bonds and undertakings in any
and all Federal Courts of the United States of

America, is held and firmly bound unto the defendants herein, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, in the full and just sum of five hundred (500) dollars, to be paid to said defendants, and their, and each of their, successors and assigns, to which payment, well and truly to be made, the undersigned binds itself, and its successors by these presents.

SEALED with our seals and dated this 4th day of September, [120] 1914.

WHEREAS, lately, at a session of the District Court of the United States, for the Northern District of California, in a suit pending in said Court between The Trinity Gold Dredging and Hydraulic Company, a corporation, plaintiff, and Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, Angele Beaudry, individually, and George H. Whitelaw, defendants, a decree was rendered against said complainant, The Trinity Gold Dredging and Hydraulic Company, a corporation, and the said complainant having obtained from said Court its order allowing it to appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, in the aforesaid suit, and a citation directed to the said defendants, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, and to each of them, citing and admonishing them, and each of them, to appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at San Francisco, in the

State of California, on or before the 3rd day of October, 1914;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH: That if the said complainant, The Trinity Gold Dredging and Hydraulic Company, a corporation, shall prosecute its appeal to effect, and answer all damages and costs that may be awarded against it, if it shall fail to make its plea good, then the obligation to be void; else to remain in full force and effect;

IN WITNESS WHEREOF, MASSACHUSETTS BONDING AND INSURANCE COMPANY, a corporation, has hereunto caused its corporate name [121] to be signed, and attested, and its corporate seal to be affixed, by its duly authorized officers, at San Francisco, California, this 4th day of September, 1914.

MASSACHUSETTS BONDING AND
INSURANCE COMPANY.

By JOHN H. ROBERTSON,
Attorney in Fact.

[Seal]

By JAMES W. MOYLES,
Attorney in Fact.

The foregoing bond is hereby approved this 4th day of September, 1914.

WM. C. VAN FLEET,
U. S. District Judge.

[Endorsed]: Filed Sep. 4, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [122]

*In the United States District Court, in and for the
Northern District of California, Second Division.*

No. 20.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC BEAU-
DRY, Deceased, ANGELE BEAUDRY, Indi-
vidually, and GEORGE H. WHITELAW,
Defendants.

Praeipice [for Transcript of Record].

The clerk of the above-entitled court will please prepare a transcript of the record for the Appellate Court in the above-entitled cause, and is hereby directed to insert therein the following:

(1) The first amended bill of complaint filed in the above-entitled cause on January 13, 1914.

(2) The motion of the defendants, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss said first amended bill of complaint filed in the above-entitled cause on January 16, 1914. [123]

(3) The order given and made by the District Court of the United States, for the Northern District of California, on the 8th day of June, 1914, granting the motion of said defendants, Angele Beaudry, as executrix of the last will and testament

of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss said first amended bill of complaint.

(4) The opinion rendered by the Judge of the said District Court, the Honorable William C. Van Fleet, on June 8, 1914, on the granting of said last mentioned motion to dismiss.

(5) Complainant's bill of exceptions to said order granting said motion of said defendants, Angele Beaudry, as executrix of the last will and testament of Frederic Beaudry, deceased, and Angele Beaudry, individually, to dismiss complainant's first amended bill of complaint, which said bill of exceptions was duly settled, allowed and approved by the above-entitled court on the 11th day of July, 1914, and was filed in the office of the Clerk of said Court on the 11th day of July, 1914.

(6) The judgment and decree of said Court given, made and entered on the 11th day of July, 1914.

(7) That certain stipulation between the parties hereto, consenting to the use of complainant's bill of exceptions to the said order granting said motion to dismiss as a bill of exceptions upon appeal from the judgment herein. [124]

(8) All papers filed by complainant herein in the prosecution of its appeal, including summons in severence, refusal to join, petition for appeal, assignment of errors, order permitting appeal, citation on appeal, appeal bond, and the approval of the same.

(Note:) In preparing the bill of exceptions referred to in the fifth specification hereinbefore, the Clerk is directed to pursue the following course:

Wherever in said bill of exceptions a document appears which already appears in the transcript, insert in lieu of said document a statement to the effect that said document already appears in the record. Thus, in lieu of inserting the first amended bill of complaint in said bill of exceptions, insert the following: "Here follows a copy of the first amended bill of complaint, with all exhibits annexed thereto, which said first amended bill of complaint and exhibits are already contained in this transcript, and are for that reason and to avoid useless repetition omitted at this point."

Dated, San Francisco, California, September 4th, 1914.

McCUTCHEN, OLNEY & WILLARD,
Solicitors for Complainant.

[Endorsed]: Filed Sep. 4, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [125]

*In the United States District Court, in and for the
Northern District of California, Second Division.*

No. 20.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC BEAU-
DRY, Deceased, ANGELE BEAUDRY, Indi-
vidually, and GEORGE H. WHITELAW,
Defendants.

Admission of Service [of Praeipe for Transcript of Record].

Admission of service and receipt of copy is hereby acknowledged on this 5th day of August, 1914, of the following:

1. Petition for Appeal;
2. Order Allowing Appeal and Fixing the Amount of Bond;
3. Assignment of Errors;
4. Bond on Appeal;
5. Summons in Severance;
6. Refusal to Join in Appeal;
7. Praeipe to Clerk of United States District Court, Second Division;
8. Citation on Appeal.

The foregoing, all being portions of the proceedings in connection with the appeal of the complainant above named from the decree of the above-entitled court to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, San Francisco, Cal., September 5th, 1914.

THOMAS B. DOZIER,

Attorney for Defendants, Angele Beaudry, as Executrix of the Last Will and Testament of Frederic Beaudry, Deceased, and Angele Beaudry, Individually.

[Endorsed]: Filed Sep. 5, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [126]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 20.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC BEAU-
DRY, Deceased, ANGELE BEAUDRY, Indi-
vidually, and GEORGE H. WHITELOW,
Defendants.

Clerk's Certificate to Record on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing one hundred twenty-six (126) pages, numbered from 1 to 126, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for transcript on appeal, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Circuit Court of Appeals, for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$84.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, attorneys for plaintiff; and that the original Citation issued in said cause is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 4th day of September, A. D. 1914.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk. [127]

*In the United States District Court, in and for the
Northern District of California, Second Division.*

No. 20.

THE TRINITY GOLD DREDGING AND
HYDRAULIC COMPANY, a Corporation,
Complainant,

vs.

ANGELE BEAUDRY, as Executrix of the Last
Will and Testament of FREDERIC BEAU-
DRY, Deceased, ANGELE BEAUDRY, Indi-
vidually, and GEORGE H. WHITELAW,
Defendants.

Citation [on Appeal (Original)].

United States of America,—ss.

The President of the United States to Angele
Beaudry, as Executrix of the Last Will and Tes-
tament of Frederic Beaudry, Deceased, and
Angele Beaudry, Individually:

You, and each of you, are hereby cited and ad-
monished to be and appear at the United States Cir-
cuit Court of Appeals, for the Ninth Circuit, to be
holden at the City and County of San Francisco,
State of California, on the 3d day of October, 1914,

being within thirty (30) days from the date hereof, pursuant to an order allowing an appeal filed in the Clerk's office of the District Court of the United States, for [128] the Northern District of California, Second Division, wherein the complainant herein, The Trinity Gold Dredging and Hydraulic Company, a corporation, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against said appellant, as in said order allowing said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, on this 4th day of September, A. D. 1914.

WM. C. VAN FLEET,
United States District Judge. [129]

Service of the within Citation and receipt of a copy is hereby admitted this 5th day of September, 1914.

THOMAS B. DOZIER,
Attorney for Defendants, Angele Beaudry, as Executrix of the Last Will and Testament of Frederic Beaudry, Deceased, and Angele Beaudry, Individually.

[Endorsed]: No. 20. In the District Court of the United States, Second Division, Northern District of California. The Trinity Gold Dredging and Hydraulic Company, a Corporation, Complainant, vs. Angele Beaudry, etc., et al., Defendants. Citation. Filed Sep. 5, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2478. United States Circuit Court of Appeals for the Ninth Circuit. The Trinity Gold Dredging and Hydraulic Company, a Corporation, Appellant, vs. Angele Beaudry, as Executrix of the Last Will and Testament of Frederic Beaudry, Deceased, and Angele Beaudry, Individually, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Received and filed September 5, 1914.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.